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1 IN THE UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NORTH CAROLINA

3 WESTERN DIVISION

ORIGINAL

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6 UNITED STATES OF AMERICA, :

7 Petitioner, :

8 v. : CASE NO. 5:10-HC-2009-FL

9 DANIEL KING, :

10 Respondent. :

11 -----X

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15 BENCH TRIAL (VOLUME II)

16 OCTOBER 18, 2011

17 HONORABLE JAMES E. GATES, PRESIDING

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1	CONTENTS	
2	THE WITNESS: DANIEL KING	EXAMINATION
3	BY MR. GRAY	4, 103
4	BY MR. BELL	57
5	THE WITNESS: DAWN GRANEY, PSY.D	
6	BY MR. LOCKRIDGE	111, 156
7	BY MR. BELL	133, 159

8
9
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11
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1 THE COURT: Good morning, folks.

2 AUDIENCE: Good morning, Your Honor.

3 THE COURT: Are there any housekeeping type
4 matters we need to take up this morning? Mr. Gray?

5 MR. GRAY: No, Your Honor.

6 MR. BELL: Not on behalf of the Respondent,
7 Your Honor.

8 THE COURT: Very good. When we last left, I
9 believe we were in the midst of testimony from Mr. King.

10 MR. GRAY: Yes, Your Honor, and the Government
11 would like to continue that examination at this time.

12 THE COURT: Very good. Mr. King, if you'd
13 resume the stand, please. Mr. King, let me remind you,
14 sir, that you do remain under oath.

15 THE WITNESS: Thank you.

16 THE COURT: Very good. Mr. Gray?

17 MR. GRAY: Thank you, Your Honor.

18 EXAMINATION

19 BY MR. GRAY:

20 Q Good morning, Mr. King.

21 A Good morning.

22 Q Mr. King, yesterday we started off your
23 testimony -- you said that you were not a sexual
24 offender, isn't that right?

25 A That's correct.

1 Q And you don't consider yourself a sexual
2 offender because you don't think you've committed any
3 offenses of a sexual nature, isn't that right?

4 A What I said was -- yesterday and what I said
5 before is that I have no crimes of a sexual nature --
6 any Federal statute or Commonwealth of Virginia statute
7 other than indecent exposure when I was a juvenile.

8 Q So is it your testimony today that you have not
9 committed any offenses of a sexual nature?

10 A That's correct.

11 Q So you haven't committed any offenses of a
12 sexual nature?

13 A That's correct.

14 Q And it's your testimony that the information
15 that you told Doctor Graney in part of the
16 precertification interview -- it's your testimony today
17 that all that was a lie?

18 A I fabricated it, yes.

19 Q Why did you fabricate it?

20 A Because I wanted to be civilly committed because
21 I thought I was going to be in a civil commitment type
22 environment and I thought it would benefit me because I
23 had no place else to go and I figured since I know how
24 to live in prison, I'd just stay there.

25 Q Now, what do you mean by a civil commitment type

1 environment?

2 A My current status is I'm a civil detainee inside
3 of a prison. I'm under prison guidelines. I'm directed
4 by prison staff and I have no -- there's nothing
5 different about my serving a 24 year under a term of --
6 for punishment than I am right now. I'm under the same
7 guidelines. There's nothing different, absolutely
8 nothing.

9 Q Why did you think you'd be under something
10 different?

11 A Because I investigated it and I saw what could
12 happen, what could be and what should be.

13 Q And you said you investigated it. You looked at
14 the Coalinga State Hospital?

15 A That's one.

16 Q What else did you look at?

17 A I also looked at New Jersey.

18 Q What did you find out about those places?

19 A I found out that they are not governed by the
20 Department of Corrections. They're governed by the
21 Department of Health and Human Services, the same as
22 with California and Washington and New Jersey -- and
23 that the patients should we say are in a therapeutic
24 environment, not guided by correctional staff who do not
25 know how to do therapeutic environments.

1 Q So it's your testimony that you wanted to stay
2 in an environment where you could essentially just
3 continue to receive treatment?

4 A I didn't say I wanted to receive treatment.
5 I wanted to be taken care of.

6 Q And you did a lot of research on this, isn't
7 that right?

8 A I did some study, yes.

9 Q And you felt like you had investigated things
10 pretty good, isn't that right?

11 A I did a fair job.

12 Q I mean, you looked at a number of other programs
13 other than just the Federal program. You looked at
14 California and New Jersey, some other ones, didn't you?

15 A Yes.

16 Q Now, in your interview with Doctor Graney, you
17 told her that you had admitted to masturbating between
18 the ages of six and 13 without feeling guilty to sexual
19 fantasies where you had exposed yourself, isn't that
20 right?

21 A Between what ages again? Say that again.

22 Q Between the ages of six and 13.

23 A I don't recall that.

24 Q Would taking a look at her report -- would that
25 refresh your memory?

1 A Well, I mean, between six and 13 is a little bit
2 young. I mean, I might have started masturbating when I
3 was ten or 11. I don't remember six. It certainly wasn't
4 fantasies about that.

5 Q So any statement that's in there that said that
6 you were having those sort of fantasies, that's a lie?

7 A That's fabricated, yes.

8 Q And when you told her that when you did have
9 intercourse with a girl, you fantasized about exposing
10 yourself and not about having -- about exposing yourself
11 to women and tying up women and raping them, isn't that
12 right?

13 A I may have, yes.

14 Q And that you told her that at the age of 14, you
15 exposed yourself for the first time to some girls, isn't
16 that right?

17 A Yes, I did.

18 Q But you are saying that that's a lie now?

19 A I did commit that crime.

20 Q And you told her that you did this under the
21 influence of alcohol and you didn't have an erection,
22 isn't that right?

23 A I was under the influence of alcohol and Darvon,
24 pain medication.

25 Q But you're telling her -- the other facts about

1 that, those are all a lie?

2 A I committed that offense as stated. As listed in
3 the police report, I did what it said.

4 Q Now, I'm not talking about the police report.
5 I'm talking about what you told Doctor Graney.

6 A Okay. What I told Doctor Graney.

7 Q Now, with regard to what you told Doctor Graney,
8 you told him (sic.) that you began exposing yourself,
9 you saw how humiliated it made the women feel, isn't
10 that right?

11 A That's what I told her.

12 Q And you told her that it gave you a sense of
13 control, isn't that right?

14 A That's what I said.

15 Q But you're now saying that those statements are
16 a lie?

17 A I fabricated that.

18 Q And you also told her that -- you described it
19 as a stimulating feeling when you humiliated females and
20 you felt euphoric from the sense of control, isn't that
21 right?

22 A That's what I said.

23 Q But you're now saying that those statements are
24 a lie?

25 A I fabricated that.

1 Q And you told Doctor Graney that you -- reported
2 that you exposed yourself to others on an almost daily
3 basis until you were arrested for the incident offense,
4 isn't that right?

5 A That's what I said.

6 Q But now you're saying that that is a lie?

7 A That's a lie.

8 Q And you told Doctor Graney that at the age of 14
9 you abducted a victim using a knife when you were 14 and
10 you took her into the woods and you exposed yourself to
11 her?

12 A That's what I said.

13 Q Are you now saying that that was a lie?

14 A That's a lie.

15 Q And you told Doctor Graney that you never
16 engaged in any sexual contact with your victims but you
17 would expose yourself to them and occasionally have them
18 masturbate you, isn't that right?

19 A That's what I said.

20 Q But now you're saying that that's a lie as well?

21 A That's a lie.

22 Q And you also told Doctor Graney that as a rule,
23 sex means nothing to you, isn't that right?

24 A That's what I said, yes.

25 Q And now you're saying that that's a lie as well?

1 A I'm saying that -- well, I've been locked up
2 almost 30 years. I'm really not too interested in sex,
3 to be quite honest with you.

4 Q And when you were speaking about that, you were
5 talking about sex with your victims, so you weren't
6 interested in having sex with your victims?

7 A As a juvenile, it wasn't on my mind, no.

8 Q And now you're saying that sex isn't on your
9 mind now. And when you were engaging in those acts,
10 what you were telling Doctor Graney, that was a lie?

11 A Yes.

12 Q And you also told Doctor Graney that you went
13 through some elaborate plans in picking your victims,
14 isn't that right?

15 A That's what I said.

16 Q You told her that you picked victims that would
17 be most easy to assault, isn't that right?

18 A Sure.

19 Q You told her that you picked victims that would
20 be women, isn't that right?

21 A Sure.

22 Q You said you picked women because they were
23 easier, isn't that right?

24 A Correct.

25 Q And you also told her that, you know, you would

1 pick women that were vulnerable such as women that were
2 walking alone at night, isn't that right?

3 A That's correct.

4 Q And then you also told her that you would not
5 pick Black or foreign women because you felt that they
6 would put up more of a fight, isn't that right?

7 A That's correct.

8 Q And you also told her it was your opinion that
9 Caucasian women tended to focus more on just survival,
10 so they would be a little more compliant to you, isn't
11 that right?

12 A That's correct.

13 Q You also told Doctor Graney that you
14 specifically targeted women who were less likely to
15 resist because they'd have something to live for, isn't
16 that right?

17 A That's correct.

18 Q But now you're saying all those statements you
19 told Doctor Graney, those were all lies?

20 A I fabricated it.

21 Q And you also told Doctor Graney that you used a
22 knife as your weapon of choice drug these abductions
23 because you felt that women feared knives more than
24 firearms, isn't that right?

25 A That's correct.

1 Q But now you're saying that that's a lie?

2 A It's fabricated.

3 Q And you also told her that you would
4 occasionally wear masks to disguise your face during
5 some offenses because you felt that your features were
6 too distinct, isn't that right?

7 A That's correct.

8 Q And then you also told her that you would
9 disguise your voice and use notecards so that women
10 couldn't recognize your voice, isn't that right?

11 A That's what I said.

12 Q Because you felt your speech pattern was too
13 distinctive, isn't that right?

14 A That's correct.

15 Q And you told her that you would prepare these
16 cards ahead of time with phrases instructing the women
17 on what to do, isn't that right?

18 A Yes.

19 Q And you told her that you would give these women
20 these cards instructing them what to do so that they
21 would engage in the conduct that you wanted them to
22 engage in, isn't that right?

23 A Yeah, I believe I said that. I believe I said I
24 showed 'em the cards, or I didn't give 'em to 'em. I
25 showed 'em. That's what I told her.

1 Q But now you're saying that all that stuff you
2 told Doctor Graney is a lie?

3 A Yes.

4 Q And you also told Doctor Graney that you would
5 normally take your victims and try to place 'em into
6 your car, is that right?

7 A That's what I said, yes.

8 Q But now you are saying that that's a lie?

9 A That's correct.

10 Q And you also told her that you would try to use
11 things such as bindings, luggage straps, blindfolds with
12 your victims, isn't that right?

13 A That's what I said.

14 Q Ropes, isn't that right?

15 A No, I don't think I said rope. I said bindings.

16 Q But you would do those not only to physically
17 control your victims but also to impart fear into them,
18 isn't that right?

19 A That's what I was indicating.

20 Q You did this to control your victims mentally as
21 well as physically, isn't that right?

22 A That's what I was trying to say.

23 Q But now you're saying all that's a lie?

24 A That's correct.

25 Q And you also told her that you didn't actually

1 try to cut or pierce the victims' skin because you
2 didn't want to have blood in your car, isn't that right?

3 A That's correct.

4 Q But now you're telling us that that's a lie as
5 well?

6 A Correct.

7 Q And then you told her that you occasionally
8 would leave some of these items in your car because you
9 might need them on occasion, isn't that right?

10 A I believe I said that, yes.

11 Q But now you're saying that that's all a lie?

12 A Yes.

13 Q And you also told her that you admitted that you
14 would use handcuffs and ropes to obtain control of a
15 victim, isn't that right?

16 A I don't recall that statement.

17 Q But if you had said that to her now, you're now
18 saying that that's a lie?

19 A Yes.

20 Q And you told her that you would take steps in
21 order to make sure that you could control your victims,
22 isn't that right?

23 A Yes.

24 Q And if you wanted to, you would fondle your
25 victims because you could do it, isn't that right?

1 A Well, yeah. Yes, I did, yes, yes, uh-huh.

2 Q And you told her that you engaged in this type
3 of behavior approximately three times a month since you
4 were the age of 15, isn't that right?

5 A Yes, I did.

6 Q But you're saying that that's a lie?

7 A Yes.

8 Q And you also told her that you replayed these
9 prior sexual offenses in your head, isn't that right?

10 A That's correct.

11 Q And now you're saying that that's a lie as well?

12 A Correct.

13 Q And you told her that once the offense occurred,
14 you knew another one would follow because the "euphoric
15 high was so good, it was better than any drug," isn't
16 that right?

17 A That's correct.

18 Q But now you're saying that that statement to her
19 was a lie?

20 A That's correct.

21 Q Now, you are not denying that you didn't say
22 those to her?

23 A I'm not denying it at all.

24 Q You're just saying that when you told her it at
25 the time, it was a lie?

1 A I had an ulterior plan.

2 Q And you also told her that you had fantasies
3 about you exposing yourself to women almost daily, isn't
4 that right?

5 A That's correct.

6 Q But now you're saying what you told Doctor
7 Graney was a lie?

8 A That's correct.

9 Q But you also told her that whenever you got
10 caught for a crime, it's because you got too wired, you
11 weren't prepared, is that right?

12 A That's correct.

13 Q You got caught because things just got, you
14 know, out of hand, isn't that right?

15 A Sure.

16 Q You got caught because you lost control, isn't
17 that right?

18 A I got caught because I made a mistake.

19 Q Now, you had the opportunity to tell Doctor
20 Graney that all this stuff was a lie right after you had
21 that interview, didn't you?

22 A I probably did.

23 Q And when you had this interview with Doctor
24 Graney, did that interview take place at Butner?

25 A Yes, it did.

1 Q And you were staying in one of the compounds at
2 Butner? Was it the Clemson House?

3 A I was isolated in the special housing unit
4 because of my custody level -- was not allowed on the
5 yard.

6 Q But that interview took place while you were
7 here at Butner?

8 A Yes.

9 Q When did you get transferred to Butner
10 permanently? Around September of 2009?

11 A Around September, 2009.

12 Q And in September, 2009, that's when you were
13 moved into the Maryland unit?

14 A That's when I was moved into the special housing
15 unit.

16 Q And after the special housing unit, you were
17 moved into the Maryland unit?

18 A Well, the day my sentence expired on January 20,
19 2010, they allowed me the privilege of living in the
20 Maryland unit.

21 Q So you have been living in Maryland Unit since
22 January of 2010, isn't that right?

23 A That's correct.

24 Q Now, Mr. King, when you were a child and you
25 were the age of 14, you admitted to exposing yourself to

1 two girls, isn't that right?

2 A Yes, I did.

3 Q And you didn't touch 'em, did you?

4 A No, I did not.

5 Q You just showed 'em your penis and said you want
6 to touch this, don't you?

7 A I may have said that. I don't even recall saying
8 that, but I may have.

9 Q But you certainly didn't touch 'em?

10 A No, I did not. They were on the other side of
11 the creek.

12 Q You didn't rape 'em?

13 A No.

14 Q Didn't sexually penetrate them?

15 A No, I did not.

16 Q You just showed 'em your penis?

17 A That's correct.

18 Q And in 1975, you were assaulted by a group of
19 teenage boys, isn't that right?

20 A I believe that was '76.

21 Q Okay. In '76, these boys, they came up to you
22 and they hit you?

23 A Yeah. They touched me up pretty good.

24 Q So good that they put you into a coma, isn't
25 that right?

1 A Yes.

2 Q In fact, you spent about six weeks in a coma?

3 A Spent about six weeks in the hospital, about
4 seven days in a coma.

5 Q And then when you were the age of 19 -- I'm
6 sorry. When you were the age of 17, you were arrested
7 for seizing, transporting and detaining with the intent
8 to defile her person, that being a young woman outside
9 of a football game, isn't that right?

10 A Yeah, that's correct, 1975.

11 Q I'm going to bring up on the timeline from
12 yesterday -- which is Government Exhibit Number 56. Let
13 me know if you see that on your screen.

14 A Okay.

15 Q I'm speaking of the event that's in red, in the
16 red box that's October, 1975, age 17.

17 A I got you.

18 Q Okay. And in that offense, you used a knife,
19 didn't you?

20 A Yes, I did.

21 Q You took that female and dragged her to a car,
22 didn't you?

23 A I escorted her to her vehicle, yes, I did.

24 Q But it's your testimony that that wasn't a
25 sexual offense?

1 A I took advantage of a situation. I had no
2 intention of raping the woman.

3 Q But you did touch her breasts?

4 A Yes, I did.

5 Q And you did expose your penis to her?

6 A I denied that then. I deny it now.

7 Q If you would, take a look on that binder at
8 Government Exhibit Number Eight.

9 A Okay.

10 Q And if you would, please go to page 2023, Bates
11 number at the bottom.

12 A All right.

13 Q That's the police report, isn't it? And in this
14 police report, the police are saying that you told them
15 that you remembered molesting the girl's breasts, isn't
16 that right?

17 A That's correct.

18 Q But you said you don't recall exposing yourself,
19 isn't that right?

20 A That's correct.

21 Q But we have on page 2022 the victim stated that
22 you exposed your penis to -- 'em, isn't that right?

23 A Yes, that's what she said.

24 Q So on page 2023 it doesn't say that you deny
25 exposing your penis. You just said you don't remember,

1 isn't that right?

2 A That's correct.

3 Q And isn't it true that also -- your buddy who
4 was in this offense with you, he also remembered it that
5 way, that you were touching her and trying to expose
6 your penis to her, isn't that right?

7 A I guess if they would have arrested me first, I
8 would have remembered it different also. That's how I
9 got caught. He got hit first.

10 Q So it's your testimony because he got hit first,
11 his story just happens to coincide with the story of the
12 victim?

13 A That seems to be par for the course in the
14 justice system.

15 Q In fact though, a lot of times in this justice
16 system, you seem to be the person who's always the
17 victim of people telling lies about you, isn't that
18 right?

19 A Hell of a system, isn't it?

20 Q Indeed, it is.

21 THE COURT: Mr. Gray, I think you were the
22 first one to use the word hit first or the phrase hit
23 first, and I'm not --

24 MR. GRAY: I'm sorry?

25 THE COURT: I believe you were the first in

1 your discussion with Mr. King to use the phrase hit
2 first, that the other gentleman was hit first.

3 MR. GRAY: I'm sorry, Your Honor. He said that
4 he -- he testified that if you got hit first, that's how
5 the story would go. I took that to mean -- and I can ask
6 Mr. King to clarify what he meant by hit first.

7 BY MR. GRAY:

8 Q Mr. King, you said that your partner got hit
9 first. Could you elaborate a little bit as to what you
10 meant by that?

11 A My meaning is is that he was arrested first and
12 he never got charged with anything, even though he was
13 involved in the crime. He was arrested and then I was
14 arrested two days later.

15 THE COURT: Oh, I see. Okay. Thank you.

16 THE WITNESS: And then all of a sudden, he's
17 not in the picture anymore. It's just all me.

18 THE COURT: Thank you, sir. Mr. Gray?

19 MR. GRAY: Thank you, Your Honor.

20 BY MR. GRAY:

21 Q And, Mr. King, the victim also said that you
22 forced her to touch your penis, isn't that right?

23 A That's what she said.

24 Q But you're saying that that's a lie as well?

25 A I'm saying two things. It didn't happen, and,

1 two, she couldn't see. She had a hat pulled over her
2 eyes.

3 Q She had a hat pulled over her eyes because you
4 pulled the hat over her eyes?

5 A When I escorted her to the vehicle, I did it
6 right away.

7 Q And, Mr. King, you pled guilty to that offense,
8 isn't that right?

9 A I certainly did.

10 Q Now, Mr. King, shortly after that offense, you
11 spent some time in a couple of hospitals, isn't that
12 right?

13 A That's correct.

14 Q In fact, you spent some time in Westbrook
15 Hospital, isn't that right?

16 A Yes, I did.

17 Q And you got kicked out of Westbrook Hospital
18 because you claimed you were "falsely accused" of trying
19 to kiss one of the women patients there, isn't that
20 right?

21 A I didn't say I was falsely accused. I said I got
22 caught kissing another girl.

23 Q Let me turn your attention to Exhibit Number
24 Nine, and if you would turn to page 1502, the doctor
25 says that you told him that you were falsely accused by

1 a female patient of having kissed her. Do you see that
2 on the page on that paragraph?

3 A Yes, I see it.

4 Q So you are saying that that's a lie?

5 A No. I'm saying I was trying to keep from being
6 kicked out. I told him what he wanted to hear.

7 Q And what he wanted to hear was it was -- falsely
8 accused?

9 A He wanted to hear that it didn't happen.

10 Q But that's not the only time that that was
11 mentioned. If you turn to page 1508 in that same
12 exhibit, isn't it true that another doctor in the
13 discharge note -- I'm sorry, that's 1505. The doctor in
14 that discharge note notes that you were expelled from
15 the hospital for engaging in sexual behavior with a
16 female patient. That's also a lie, isn't it?

17 A Who is this? Who wrote this?

18 Q Well, one of your physicians. Are you saying
19 that this is a lie?

20 A I'm saying I admitted it and I have admitted it
21 since that myself and a girl named Sally were caught
22 kissing and I was expelled. I mean, if you want to call
23 kissing a sexual misconduct, I'm fine with it.

24 Q So it's your story that you were caught kissing?

25 A Yes, we were.

1 Q And that this woman was engaging in this
2 willingly with you?

3 A Sure, she was.

4 Q Mr. King, with regard to other behavior that you
5 said was consensual, that doctor also said that you were
6 unmanageable while you were at Westbrook, isn't that
7 right?

8 A He may have.

9 Q Now, Mr. King, isn't it true that after you left
10 Westbrook, you were being treated at Phipps Hospital for
11 a while at Johns Hopkins? Isn't that right?

12 A Yes. I left Westbrook, went back to jail, and
13 then I was placed in Phipps Clinic at Johns Hopkins
14 Hospital.

15 Q And at Johns Hopkins, you told the doctors that
16 you were having difficulty controlling your impulses
17 exposing yourself to women, isn't that right?

18 A Yes, I did.

19 Q And you told the doctors back in 1976 that you
20 were having fantasies about exposing yourself and tying
21 women up and raping them?

22 A That's what I said.

23 Q And you spent a lot of time at Phipps Hospital.
24 In fact, you got pretty good treatment there, wouldn't
25 you say?

1 A Yes.

2 Q Yet after you were done getting treated at
3 Phipps Hospital, in '78, you were arrested for abduction
4 of two women, isn't that right?

5 A That's correct.

6 Q And it's your story that this abduction wasn't
7 for any sexual reason, isn't that right?

8 A That's correct.

9 Q It's your story that this was for money, isn't
10 that right?

11 A That's correct.

12 Q In fact, you testified that you went to the
13 first woman and tried to get her into a car, isn't that
14 right?

15 A No, that's not what I said. I said I went up
16 behind the woman and attempted to grab her and push her
17 up against the vehicle, which is what I did.

18 Q But she got away?

19 A Yes.

20 Q So after she got away, then you went and tried
21 to find another woman?

22 A Yes.

23 Q And when you found her, you tried to push her
24 into a car as well, isn't that right?

25 A I followed her out of the establishment after I

1 discovered that she had good finances and I followed her
2 to her vehicle. When she got into her vehicle, I jumped
3 in with her and demanded the money.

4 Q You said that you did it after you discovered
5 she had good finances?

6 A Yes.

7 Q You had a chance to see her credit report?

8 A Go to a bar. All you've got to do is watch.

9 Q So you were watching her for a while, isn't that
10 right?

11 A I was watching several people.

12 Q But you were watching her in particular, isn't
13 that right?

14 A Yes.

15 Q In fact, you just testified that she had good
16 finances, so you must have seen her pull money out of
17 her purse a couple times, isn't that right?

18 A Yes, I did.

19 Q So you must have been watching her purse, isn't
20 that right?

21 A I was watching her pay, yes.

22 Q And you followed her out of the bar, isn't that
23 right?

24 A That's correct.

25 Q And you saw her as she was walking out of the

1 bar, isn't that right?

2 A Yes.

3 Q But rather than stealing her purse, you went and
4 you grabbed her body, isn't that right?

5 A I didn't grab her body. When she was in her
6 vehicle, I jumped in there beside her and pushed her
7 down and demanded the money.

8 Q So as you saw her get out of the -- walk out of
9 the bar, before she got to her car, you didn't take her
10 purse, you waited until she got in her car, jumped in on
11 top of her and then threatened her?

12 A Yes.

13 Q And this was the second woman of that night?

14 A That's correct.

15 Q Yet this woman, she got away, didn't she?

16 A Yes.

17 Q How did she get away?

18 A She started kicking and screaming, so I left.

19 Q You left voluntarily?

20 A Yes.

21 Q Because you figured that you weren't going to be
22 getting what you wanted from her, isn't that right?

23 A Too big of a scene. I left.

24 Q And after you left, you went back to your car,
25 isn't that right?

1 A Yes, I did.

2 Q And when you got back to your car, that's when
3 the police caught you, isn't that right?

4 A No, it's not.

5 Q When did the police catch you?

6 A They caught me approximately a month later from
7 a composite sketch.

8 Q And that composite sketch, that's when the
9 police showed your photo to the victim, isn't that
10 right?

11 A I don't know. I don't really know what they did
12 at that point. I know I had just been arrested for a
13 trespassing charge. When they took me to the jail, there
14 was a composite sketch and the deputies identified me
15 and they notified the police department.

16 Q Just to make sure we're all talking about the
17 same thing, I've put back up on the screen Exhibit
18 Number 56. I'm speaking about the top red block that
19 says April 7, 1978, age 19.

20 A Okay.

21 Q That's the event where you followed the first
22 woman where you got to her and you were -- you pushed
23 her up against the car, left her, went to the bar,
24 followed this woman to the bar, pushed her into her car,
25 she started kicking and screaming and you walked away

1 voluntarily?

2 A Yes.

3 Q Now, Mr. King, would you please turn to Exhibit
4 Number Ten in that binder?

5 A Yes.

6 Q On that page, it talks about how you were on
7 probation at this time, isn't that right?

8 A I was on -- I don't know if I was still on
9 probation for the 1975 thing or not. I may have been.
10 I think I was if it went until I was 21, so yes.

11 Q Yet it's your testimony that that assault took
12 place and that wasn't sexually motivated, you were just
13 trying to take money from both those women?

14 A That's correct.

15 Q Now, after that, you had some time in prison,
16 isn't that right?

17 A I did -- I completed a five year sentence. I was
18 sentenced to ten years with five years suspended and I
19 served five.

20 Q While you were in jail, did you get married?

21 A Not at that time, no.

22 Q Were you married when you went into jail?

23 A No, I was not.

24 Q So when you got out of jail in 1983 --

25 A I got out of jail December 29, 1980. That was --

1 my five year sentence was up from 1978 until January --
2 I mean, December 29, 1980 is when I was released from
3 the Virginia Department of Corrections.

4 Q So you were released from jail in 1980?

5 A Correct.

6 Q And in 1983, you get arrested again?

7 A Two and a half, almost three years later, that's
8 correct.

9 Q And this time it's also for assaulting a woman,
10 isn't that right?

11 A Yes.

12 Q And also for carrying a deadly weapon, isn't
13 that right?

14 A That's correct.

15 Q And in this event, you told the woman don't
16 scream or I'll kill you, isn't that right?

17 A I said something to that effect.

18 Q And it's your testimony that this was not being
19 done for the purposes of any sexual motivation, it was
20 done because you were trying to take her money, isn't
21 that right?

22 A That's correct.

23 Q And it was in this event that the police found
24 in your possession handcuffs, isn't that right?

25 A That's what they reported.

1 Q And you also had -- air pistol, isn't that
2 right?

3 A That's correct.

4 Q And you also had an axe handle, isn't that
5 right?

6 A That's correct.

7 Q And you had ropes, isn't that right?

8 A Yes, I did.

9 Q You also had tape, isn't that right?

10 A I don't know anything about any tape.

11 Q But it's your testimony that those items weren't
12 in your car because you were going to engage in any sort
13 of activity with that woman? Why did you have those
14 items in your car?

15 A Well, first of all, none of those items were
16 with me when I committed the simple assault. Nobody ever
17 reported seeing anything with me at that time. Twenty
18 minutes later, I was apprehended driving my vehicle and
19 they found these items in my vehicle. The ropes went
20 along with -- 120 foot rope and a climbing saddle that I
21 used for my job because I was a tree climber. I also had
22 tree spikes in there that I used.

23 Q What are tree spikes?

24 A -- that you strap on to your leg and climb a
25 tree with. You stick 'em to the tree.

1 Q Are they sharp instruments?

2 A Yes, they are.

3 Q Could you kind of describe them? Are they
4 long --

5 A They fit around your leg, you strap 'em on and
6 you climb trees or you climb a telephone pole. Pole
7 climbers use 'em to climb telephone poles.

8 Q So these are long, sharp rods?

9 A No. They're just strap-on rods. They fit on to
10 your feet and you use 'em to climb trees with or
11 telephone poles, and it's part of my job.

12 Q Okay.

13 A The handcuffs were in my coat which was laying
14 on the seat along with the box that had a Crosman air
15 pistol in it. I also had a knife, which is ultimately
16 what I was charged with, the knife.

17 Q So you're saying that the knife was the deadly
18 weapon that you were charged with?

19 A That's what I pled guilty to, that's correct.

20 Q Now, you're saying you pled guilty to the knife
21 being the deadly weapon but not the air pistol?

22 A That's correct.

23 Q Now, the events of that night, you went to the
24 woman, and did you grab her?

25 A No, I did not.

1 Q So it's your testimony you didn't grab her?

2 A No.

3 Q You just walked over to her and said I'll try to
4 kill you?

5 A I walked up to her and her -- that sounds cool.
6 That's not going to work. I walked up to her and her
7 boyfriend standing on a corner. They just come out of a
8 drinking establishment, and I asked her and him if they
9 would escort me to my vehicle because I had been
10 drinking, and they both denied it, so I watched them
11 walk to a vehicle. When she sat down in a vehicle, I
12 walked up to them and I leaned over to her and said
13 something to the effect of don't scream or I'll kill
14 you, give me your money, and he said what are you doing.
15 I told him to get away.

16 Q So it's your testimony that you went up to her,
17 both of them, and said hey, could you walk me to my car?

18 A Yes.

19 Q And then it's your testimony that you followed
20 her to the car?

21 A Followed them both. I watched them both walk to
22 the vehicle.

23 Q And you didn't ask her to take you anywhere? You
24 just walked with her to her vehicle?

25 A That's correct.

1 Q Then got into the vehicle with her?

2 A I walked behind them both while they went to the
3 vehicle.

4 Q And then when she got to the vehicle, did you
5 wait until she got in the car door and close the door
6 before you started talking?

7 A Waited for her to open the car door and sit down
8 and put the key in the ignition. When she was in the
9 vehicle, I leaned over to her and said don't scream,
10 give me your money. I told him to back away because he
11 asked me what I was doing.

12 Q And when you did this, you were wearing a green
13 coat?

14 A I had no coat on. I had a green shirt on because
15 it's a part of my work outfit.

16 Q But your testimony is that when you did this,
17 you didn't have any weapons on you?

18 A No, I did not.

19 Q And after this --

20 A I never displayed a weapon because one was never
21 reported at the scene of the crime.

22 Q And then after this happened and she said no,
23 you walked away?

24 A Yeah, between her and him, I got out of there.

25 Q And when you walked away, you decided that you

1 were going to go to your car?

2 A I did.

3 Q And when you got to your car, that's when the
4 police showed up, isn't that right?

5 A No, it's not.

6 Q When did the police show up?

7 A I got in my vehicle, I drank a beer, started my
8 vehicle up, took off, went driving down the road,
9 Wisconsin Avenue, and about that time, a police car
10 pulled up behind me and he told me to pull over. I
11 pulled over on Brandywine Avenue and they -- by that
12 time, there was two other vehicles there, two other
13 police vehicles, and they told me to get out of the
14 vehicle, and I did.

15 Q So you got out of the vehicle, and when they
16 started to search your vehicle, they found rope, didn't
17 they?

18 A They found my climbing gear, yes.

19 Q They found rope, right?

20 A Okay.

21 Q That's a yes?

22 A Yeah.

23 Q And they found handcuffs, right?

24 A They found 'em in the coat pocket, yes.

25 Q And they also found the air pistol, isn't that

1 right?

2 A That's correct.

3 Q Now, they found the handcuffs in the coat
4 pocket, right?

5 A That's what they reported.

6 Q And they found an axe handle in your car, isn't
7 that right?

8 A Yes, they did.

9 Q But it's your testimony that that axe handle was
10 part of your work equipment, isn't that right?

11 A Yes, it was.

12 Q And the rope that was found, that was because of
13 your work equipment as well, isn't that right?

14 A That's correct.

15 Q And they also found electrical tape in your car,
16 isn't that right?

17 A That was in my toolbox.

18 Q And they also found -- in addition to the rope,
19 the electrical tape, the axe handle and the air pistol,
20 they found the knife?

21 A That's correct.

22 Q And the rope, wasn't that attached to one of the
23 seat belts and, you know -- the seat belt anchors?

24 A I don't recall that. It's been said that it was,
25 but I really don't recall that.

1 Q So are you saying that that didn't happen?

2 A I'm saying I don't recall that being there like
3 that. If it was, I don't know how it got like that.

4 Q But you recall being pulled over on Brandywine?

5 A Yes, I do.

6 Q But you don't recall the rope?

7 A Yes. I would have recalled that then if I'd have
8 put it there.

9 Q Would you take a look at Exhibit Number 13, page
10 1970? That's the police report.

11 A Okay.

12 Q In that paragraph, it says that -- lying in the
13 front passenger seat, one Crosman air pistol. It says
14 that, doesn't it?

15 A Yes, it does.

16 Q And it says removed from the front jacket
17 pocket, one pair of handcuffs, isn't that right?

18 A Yes, it does.

19 Q It also says that you were wearing a coat at
20 that time, isn't that right?

21 A No, I did not have a coat on. I had a green
22 shirt on. The coat was lying on the seat next to the
23 box.

24 Q So that line that says Defendant wearing red
25 knit hat and green jacket, that's a lie?

1 A Yeah. They're just mistaken. The green shirt was
2 big. It's long sleeve. They took the jacket right off
3 the seat.

4 Q And the air pistol that was lying in the front
5 passenger seat, that's part of your work equipment as
6 well?

7 A No.

8 Q Well, you probably had some legitimate reason
9 for having it there.

10 A Well, it was in the box. It was still in the
11 box and -- which I -- I seen they conveniently didn't
12 put that in the report, but it belonged to my stepson.

13 Q And the handcuffs, that's part of your work
14 equipment as well, isn't it?

15 A No, it's not.

16 Q Well, I'm sure you have some legitimate reason
17 for having handcuffs there, right?

18 A They belonged to my stepson as well.

19 Q Your stepson had handcuffs?

20 A Toy handcuffs. They were not real handcuffs.

21 Q And it's just a coincidence that the police
22 didn't identify them as toy handcuffs, right?

23 A -- I didn't get charged with 'em either, did I?

24 Q Then we have in there under the driver's seat,
25 one axe handle. That's what the report says, right?

1 A Okay.

2 Q And you keep your axe handle under the driver's
3 seat because that's where you keep most of your work
4 equipment, isn't that right?

5 A I keep it there because it's more convenient to
6 keep it out of the way so it doesn't roll around.

7 Q And then it says that -- numerous length of rope
8 lying on the floorboards, including one hooked through
9 seat belt anchor, isn't that right?

10 A That's what it says.

11 Q Now, if you turn to the page right in front of
12 that, that page which is 1969, --

13 A Okay.

14 Q -- at the bottom of that page, it looks as
15 though there's an inventory of the stuff that was
16 found -- has air pistol, isn't that right?

17 A Correct.

18 Q Pair of handcuffs, isn't that right?

19 A Correct.

20 Q Doesn't say toy handcuffs, does it?

21 A No, it doesn't.

22 Q One axe handle, right?

23 A That's correct.

24 Q Numerous pieces of rope, isn't that right?

25 A That's correct.

1 Q Right below that, it shows handcuffs, air
2 pistol, tape, lengths of rope, Defendant on parole.
3 Do you that paragraph below in that block 17?

4 A Yes, I do.

5 Q It doesn't say anything in there about work
6 gloves, does it?

7 A Work gloves?

8 Q Work gloves.

9 A No. I didn't see anything there.

10 Q It doesn't say anything about the tree spikes in
11 there, does it?

12 A No, it doesn't.

13 Q And it's your testimony that the reason why you
14 engaged in that conduct was because you were trying to
15 steal her money, isn't that right?

16 A That's correct.

17 Q Now, on page 1969 where it says one pair of
18 handcuffs, --

19 A Yes.

20 Q -- it says right front jacket pocket right next
21 to that. Do you see that?

22 A That's correct.

23 Q It says that it was taken from the defendant
24 right next to that. You see that, right?

25 A Yes, I do.

1 Q The axe handle where it says -- under driver's
2 seat, it says it's taken from Defendant's auto, doesn't
3 it?

4 A That's correct.

5 Q And it's your testimony that the weapon that you
6 pled guilty to was the knife?

7 A That's correct. I still don't see that on here.

8 Q If you would take a look at Government Exhibit
9 Number 12, --

10 A Okay.

11 Q -- it says you were charged with the dangerous
12 weapon being the air pistol, doesn't it? Daniel King did
13 carry either openly or conceal on or about his person a
14 deadly or dangerous weapon, to wit, a Crosman air
15 pistol.

16 A That's what it says.

17 Q But it's your testimony that you pled guilty to
18 the knife as being the deadly weapon?

19 A That's what I recall pleading guilty to.

20 Q And it's guilty to the knife that's not listed
21 on the report, right?

22 A That's correct.

23 Q Yet you pled guilty to the assault, isn't that
24 right?

25 A Simple assault, yes, I did.

1 Q And you pled guilty to the -- a dangerous
2 weapon, isn't that right?

3 A Yes, I did.

4 Q Now, Mr. King, after those two incidents, you
5 spent some time in jail again, isn't that right?

6 A I had my probation from Virginia violated and
7 the judge executed a five year suspended sentence and I
8 was placed in Virginia Department of Corrections.

9 Q So you spent some time in jail?

10 A Spent another two years and some change there
11 until I was paroled -- to my DC offense.

12 Q And then you were paroled and out on parole --
13 you were on parole for approximately six months?

14 A Yeah, October, whatever it was, until February.

15 Q And you violated your parole in February after
16 being out of jail for a simple assault by committing
17 another assault, isn't that right?

18 A That's correct.

19 Q And in that assault in 1988, you told the
20 presentence investigator that your intentions were for
21 sexual assault, that you weren't able to control what
22 you were doing?

23 A That's what I said.

24 Q And you also told that pretrial services officer
25 that your impulses were strong and that you'd been

1 engaging in this sort of stuff since 1975, isn't that
2 right?

3 A That's what I said.

4 Q But you're now saying what you told the pretrial
5 services officer -- that's a lie, isn't it?

6 A It was a fabrication to a point where I was
7 trying to manipulate something.

8 Q And what were you trying to manipulate this
9 time?

10 A Some assistance -- lesser time. I was facing a
11 life sentence.

12 Q So you were facing life sentence from a crime
13 that you had committed?

14 A That's correct.

15 Q And did you plead guilty to a assault for sexual
16 purposes?

17 A No, I did not.

18 Q You didn't plead guilty to sexual assault, did
19 you?

20 A No, I did not.

21 Q You didn't plead guilty to attempted sexual
22 assault, did you?

23 A No, I did not.

24 Q You pled guilty to assault with intent to rob,
25 isn't that right?

1 A I pled guilty to armed kidnapping.

2 Q So it's your testimony that you were telling the
3 pretrial services officer that you were engaging in a
4 sexual offense because you wanted to get less time?

5 A I was trying to manipulate, yes.

6 Q Now, you told that to the pretrial services
7 officer, isn't that right?

8 A Yes.

9 Q And you were represented by an attorney, right?

10 A Yes, I was.

11 Q And this attorney, did she advise you that, you
12 know, in order to get less time, you would do better if
13 you admitted to some sort of sexual offense?

14 A Not to the extent where they were saying I would
15 get less time for me -- to a sexual offense, but I would
16 probably come out better if they thought I had some
17 psychological issues that needed some attention.

18 Q So you're saying that your attorney advised you
19 that if you had psychological problems, you'd be better
20 off sentence wise? Is that your testimony?

21 A Yes.

22 Q So it's your testimony that your attorney is
23 telling you that if you say you've got sexual problems,
24 you're going to get less time?

25 A Yeah. Problems period, yes.

1 Q Well, had problems -- then you decided that
2 instead of just saying you had problems, you decided you
3 were going to say you had sexual problems?

4 A Well, it would fit the pattern of my life, yes.

5 Q And you did it because you thought it would fit
6 the pattern of your life, isn't that right?

7 A Yes, I did.

8 Q And prior to sentencing, you guys provided
9 evidence to the judge, isn't that right?

10 A Yeah, I think we did.

11 Q In fact, you even wrote a letter to the judge,
12 didn't you?

13 A Yes, I did.

14 Q And in that letter to the judge, you said, you
15 know, the stuff that you say to a judge when you're
16 about to be sentenced, isn't that right?

17 A Yeah.

18 Q You say you're sorry?

19 A Said it all.

20 Q You said you wanted to take responsibility for
21 your actions?

22 A I certainly did.

23 Q You say that, you know, you've learned the
24 errors of your ways and you're going to do better in the
25 future, isn't that right?

1 A That's right.

2 Q And you knew that this judge was going to help
3 you out with the sentencing aspect, right?

4 A I didn't know a damn thing.

5 Q Well, you knew this judge was handling the
6 sentencing, right?

7 A I knew I was facing a life sentence. I would
8 have tap danced if that's what he wanted.

9 Q And if he would have wanted, you said you would
10 have tap danced?

11 A Yes.

12 Q Yet in your letter to this judge, you didn't
13 mention anything about your sexual problem, did you?

14 A No, I didn't. I don't recall. It's been so long
15 since I've seen the letter, but, no, I don't recall
16 that.

17 Q Well, if you turn to Exhibit Number 22, it's
18 right there.

19 A Yeah. I remember that letter.

20 Q And in that letter, you talk about how you --
21 you know, you're frustrated with yourself for the stuff
22 you're doing, right?

23 A That's correct.

24 Q You talk about how you were tired of dealing
25 with these problems. In fact, you say mental problem.

1 You don't say sexual assault problem. You say mental
2 problem, isn't that right?

3 A That's what I said.

4 Q In fact, nowhere in this letter to the judge who
5 is responsible for your sentencing that spans three
6 pages does it say anything about sexual problems, does
7 it?

8 A No, it doesn't.

9 Q Could you turn to page 23? I'm sorry, to
10 Exhibit Number 23.

11 A Okay.

12 Q And turn to the fourth page in that -- on that
13 exhibit which is Bates number 1956, and it's out of
14 order because the actual page which would have been 855
15 is a blank page, so it's been inserted with knowledge of
16 Counsel of what the actual page is. Top of that
17 paragraph says Defendant's version, doesn't it?

18 A Yes.

19 Q And in that defendant's version, it says I was
20 attempting to push her into the vehicle, but she broke
21 away from me, isn't that right?

22 A Yes.

23 Q And that's what took place, isn't it?

24 A That's what I told -- took place.

25 Q And then you said that's all that happened,

1 isn't that right?

2 A Yes.

3 Q And then it says why, man, I wish I could tell
4 you. I know my intentions were for sex assault. I wasn't
5 able to control what I was doing. I wasn't intoxicated
6 and I don't use drugs. It says that, right?

7 A That's what it says.

8 Q And you told that to the pretrial investigator?

9 A Yes, I did.

10 Q But you're saying you fabricated this to the
11 pretrial investigator for ulterior motives?

12 A I boosted it up a little bit, yeah.

13 Q Then a little bit later on in that paragraph, it
14 says the impulses were so strong, I attempted to get
15 help for them. It says that?

16 A In that paragraph?

17 Q Uh-huh, at the bottom line of that paragraph.

18 A Oh, yeah, yeah. Okay. I see it.

19 Q And it's been happening since 1975?

20 A That's what it says.

21 Q And this is all part of the pretrial report
22 which you had an opportunity to review prior to trial,
23 isn't that right?

24 A Yes, it is.

25 Q Yet you didn't file any objections to it?

1 A Not that I recall. I think we filed one where I
2 indicated that Russell Caheen and Ms. Van Susteren
3 said that the fact that I had gave a dirty urine
4 indicated that I was using drugs.

5 Q But other than that, all the information in here
6 you felt was accurate, isn't that right?

7 A That's what I gave 'em.

8 Q Now, Mr. King, while you were in the Bureau of
9 Prisons, you received a lot of counseling, isn't that
10 right?

11 A Yes. I received my fair share.

12 Q And some of it has been useful to you, isn't
13 that right?

14 A Say that again, please.

15 Q Some of it's been useful to you, right?

16 A Sure.

17 Q And some of it you would say is not so helpful?

18 A Pretty much.

19 Q And in some of the treatment, they tell you that
20 you need to discuss what it is that you've done in order
21 to better explain or better treat your overall problem,
22 isn't that right?

23 A Yeah, yeah. Okay. I'll go with that.

24 Q I mean, it's part of the treatment for you to
25 discuss some of the things that you've done so that you

1 can recognize where you've gone wrong, isn't that right?

2 A Yeah. Well, I'm not a fool. I'm not going to
3 tell 'em something I did and it's not true. I mean, I
4 made up a lot of stuff, yes, but I wasn't going to sit
5 there and tell 'em I got this going on, I've got that
6 going on, because you've got to be very careful what you
7 say in prison to a prison psychologist, very careful.

8 Q Because what can be said to you can be used
9 against you?

10 A Because of what's happening right now. If I'd
11 have known all this that was going to happen and bite me
12 in the ass like this, I'd have never done it.

13 Q And by never done it, you mean --

14 A I would have never talked to a damn one of 'em.

15 Q Now, you wrote a letter to the certification
16 review board asking for certification, didn't you?

17 A Yes, I did.

18 Q In fact, you wrote a letter back in -- when
19 you were at Terre Haute asking to be admitted into the
20 program back in June of 2009, isn't that right?

21 A Where is that so I can see it, please?

22 Q That's back in Exhibit Number 24 if you want to
23 take a look at it.

24 A Thank you.

25 Q I'm sorry, 44.

1 A Yes. I recall that letter.

2 Q And that letter, you're talking about how you
3 have problems?

4 A Yes.

5 Q How you want to get treatment for those
6 problems?

7 A That's what I said.

8 Q And that you don't have any desire to harm
9 anybody, right?

10 A Correct.

11 Q And that ultimately if you get a little help,
12 you'll be able to become a productive member of society
13 is basically what you're trying to get across, isn't
14 that right?

15 A That's the plan.

16 Q Then you wrote another letter this time, and
17 this is at 45, to Ms. Marbury. (phonetic) Who's Ms.
18 Marbury?

19 A She was the warden at US Penitentiary at Terre
20 Haute.

21 Q And in that letter to the warden, you were
22 letting her know listen, you're willing to cooperate and
23 not contest your decision when it came to certification,
24 isn't that right?

25 A That's correct.

1 Q But in April of 2010 -- and this is Exhibit
2 Number 51 -- you wrote a letter saying that you don't
3 want to participate in certification or sexual offender
4 treatment anymore, isn't that right?

5 A Correct.

6 Q In fact, you say the reasoning behind that is
7 because now you've got a place to stay, isn't that
8 right?

9 A That's -- basically my feeling was that I had
10 some support in society to assist me. That's basically
11 what I was saying.

12 Q Now, you're telling her in this letter that
13 you've got some support in society to assist you, so you
14 don't need to go to sexual offender treatment anymore,
15 isn't that right?

16 A Basically what I was saying was I didn't need to
17 stay at FCI Butner anymore in this so-called program.

18 Q Because staying at this so-called program at
19 that point in time didn't look as good as staying
20 with --

21 A Being that my sentence was up, I really didn't
22 like the idea of still doing time.

23 Q And you told Ms. King -- who's your wife, right?

24 A My former wife, yes, my ex-wife.

25 Q -- your ex-wife that you're not interested in

1 having a relationship with her anymore, isn't that
2 right?

3 A We've got a very good relationship. I don't want
4 to have a -- an affair -- I mean, a live in relationship
5 while I'm her boyfriend or husband because that's not
6 going to work.

7 Q So you don't want to live with her?

8 A No.

9 Q You don't want to have the supportive
10 relationship of her being a husband or a -- I mean, of
11 being a wife --

12 A No. I mean, I love her to death. I think the
13 world of her, but I can't live with her.

14 Q And you can't live with her for a number of
15 reasons?

16 A There's a variety of reasons.

17 Q One of those reasons is when you live with
18 somebody, your past history shows that you get married,
19 you go to jail because you commit a crime, isn't that
20 right?

21 A Pretty much.

22 Q In fact, you said as much at your deposition,
23 remember?

24 A Oh, I did. I think it's a wise decision then.

25 Q So you would not want to live with Ms. King if

1 you were released, isn't that right?

2 A No, huh-huh, don't want to.

3 Q Mr. King, the reason why you're now recanting
4 your previous statement that you wanted commitment and
5 that you thought you had a problem is because now you
6 realize that you would have been at FCI Butner
7 undergoing treatment and you don't like that, isn't that
8 right?

9 A I'll put it to you like this. I completed
10 serving a criminal sentence where I was -- punished for
11 24 years. My sentence was up, and I was still under the
12 same guidelines. I am not going to try to receive
13 treatment in that environment. It will not work.

14 Q And part of it is because you don't need
15 treatment for sex offense because you're not a sex
16 offender?

17 A That's one reason.

18 Q And you don't like the environment?

19 A I certainly do not. If I want to be in prison,
20 I'll commit another crime.

21 Q And, Mr. King, you are not a sex offender, isn't
22 that right?

23 A That's my feeling, yes.

24 Q Although you exposed yourself to a seven and
25 eight year old when you were 14, right?

1 A Correct.

2 Q And you pushed a woman into a car after a
3 football game, fondled her breasts and asked her to
4 touch your penis?

5 A At 15.

6 Q And then you had rope, axe handle, air pistol,
7 handcuffs in your car after trying to abduct yet another
8 woman?

9 A That's correct.

10 Q And you attempted to engage or -- you asked a
11 prison psychiatrist to touch your penis while in jail
12 serving time for that 1983 offense, right?

13 A 1993, that's correct.

14 Q Yet you're not a sex offender?

15 A I don't think so.

16 Q And any sex offender treatment you feel wouldn't
17 be useful for you?

18 A No.

19 MR. GRAY: Thank you. No further questions,
20 Your Honor.

21 THE COURT: Thank you. Mr. Bell?

22 MR. BELL: Thank you, Your Honor.

23 EXAMINATION

24 BY MR. BELL:

25 Q Mr. King, I want to go back and talk a little

1 bit about your family background and your history.

2 I believe it's been well-established that you were
3 adopted at a very young age. Do you have any idea how
4 old you were when you were adopted?

5 A I was 13 months.

6 Q And you have an older or a younger brother who's
7 also adopted?

8 A I've got an older brother.

9 Q Do you have any relationship with your older
10 brother?

11 A No.

12 Q What's his name?

13 A Stephen Robert King.

14 Q When's the last time you heard or talked to or
15 saw him?

16 A 2002 maybe.

17 Q And since all of this certification process has
18 started, have you had any contact with him at all?

19 A No, I haven't.

20 Q And both your parents -- your mother's name is
21 Ruth -- was Ruth. Your father was Bob. Are they still
22 living?

23 A No. They have passed on.

24 Q Okay. And, of course, you testified in reference
25 to your ex-wife, Marty (sic.) King. She's still living,

1 but you guys are divorced, correct?

2 A That's correct.

3 Q You do have a son. What's his name?

4 A Matthew Nolan Edward King.

5 Q She was pregnant with Matthew when you were
6 incarcerated in 1988, isn't that correct?

7 A That's correct.

8 Q Have you ever seen Matthew?

9 A No.

10 Q Have you talked to him on the phone?

11 A Yes.

12 Q And your other wife, your prior wife, your first
13 wife, Dorothy Jordan, you were married to her in the
14 early '80s, were divorced. You haven't heard or talked
15 to her since then, have you?

16 A Actually, since my arrest in 1983 when we were
17 married, no --

18 Q Okay. Now, you mentioned that you -- when you
19 were very young or when you were young, you had a
20 hearing problem that affected your ability to speak.

21 A That's right.

22 Q If you would, tell The Court a little bit about
23 it, what the nature of the hearing problem was and what
24 was done to try to correct that problem.

25 A I had to have surgery to fix the anvil bone,

1 what they call the anvils and the stirrup, whatever, and
2 the nerve had to be reconnected properly so I could
3 hear.

4 Q Do you have any recollection as to when, what
5 the time frame was, how old you were when that took
6 place?

7 A I was almost nine years old.

8 Q Did they do both ears around the same time?

9 A Yes, they did.

10 Q Did that correct the problem completely, or do
11 you still even to this day have some hearing deficits?

12 A I hear different than most people do. I still
13 lip read because it's assistance to me, but I hear.

14 Q And as we sit here today, you have hearing aids
15 that you use? You don't have 'em in today, but you do
16 have hearing aids, isn't that correct?

17 A Yeah.

18 Q And it has affected your ability to speak? You
19 do have a little bit of a speech impediment as a result
20 of your hearing loss?

21 A I've been working at it since I was ten years
22 old, I mean.

23 Q Okay, but it still affects the way you speak?

24 A Yeah, some.

25 Q And even as a result of your hearing issues, up

1 until age eight or nine, I think the records reflect
2 that you were in a school for the hearing impaired.

3 A That's correct.

4 Q And then after your hearing was repaired, you
5 went into the regular school system?

6 A I started going to regular schools.

7 Q Now, you didn't graduate from high school, did
8 you?

9 A No, I did not.

10 Q Have you gotten your high school diploma or an
11 equivalency since then?

12 A Yeah. I received my GED, I believe it was 1978
13 or '79, at Staunton Correctional Center while I was in
14 Virginia Correctional Department.

15 Q And have you gotten any further education since
16 then?

17 A Yes. While I was at Staunton, I took college
18 courses for the Blue Ridge Community College, and then
19 since I've been in the Bureau of Prisons, I used a Pell
20 grant to obtain enough credits for business
21 administration, two year degree.

22 Q So you have an associate's degree in business?

23 A That's correct.

24 Q And that was done since you've been in the
25 Bureau of Prisons?

1 A Correct.

2 Q Have you been able to use any of those skills
3 that you obtained in your business degree since you've
4 been incarcerated?

5 A Yes. My work history shows that I worked in
6 UNICOR for approximately maybe nine or ten years where I
7 did cost accounting, payroll and accounts payable.

8 Q Now, you're not currently working for UNICOR
9 while you're in Butner, are you?

10 A No, I'm not.

11 Q What are you doing up there now?

12 A The only job I'm committed to have is working in
13 the bakery in the midnight shift.

14 Q And you're doing that currently?

15 A That's correct.

16 Q Your work history before your incarceration, you
17 talked to -- you testified related to your work as a
18 tree surgeon or a tree climber.

19 A That's correct.

20 Q Tell The Court a little bit about what that is,
21 if you would, please.

22 A I learned how to climb trees, to -- prune 'em
23 and take down trees if necessary.

24 Q When was -- how old were you when you first got
25 into that business?

1 A I started -- when -- in the mid '70s, I started
2 liking it and working at it, but I was working on the
3 ground because I was still recovering from surgery on my
4 feet, so I was learning the maneuvers and the works at
5 that time.

6 Q And you mentioned your feet. Tell The Court, if
7 you would, kind of what the nature of the problem with
8 your feet is and what's been done to try to correct
9 those issues.

10 A I have a bone deformity that's -- medically it's
11 called cavus foot where the outside bones and the
12 interior ankle bones deteriorate, so they had to go in
13 and repair the bones, take 'em out and repair 'em and
14 put 'em back.

15 Q And you've had this since you were born?

16 A It started -- you're born with it. It's passed
17 on, but it didn't start effecting me until I was like 11
18 years old.

19 Q And at age 11, you started a series of surgeries
20 to try to correct this issue, isn't that right?

21 A That's correct.

22 Q How many surgeries have you had over the years
23 on your feet?

24 A I've had eight.

25 Q Now, were those surgeries prior, you know, when

1 you were younger, or have you had any surgeries on your
2 feet in more recent years?

3 A My last one was here in the Bureau of Prisons.
4 I had arthroscopic surgery to repair a -- tendons, try
5 to loosen up my tendons on my toes.

6 Q So this cavus foot condition is still affecting
7 you and your ability -- your feet?

8 A I have documented -- arthritis deforming me, my
9 toes, and I have seen a lot of problems.

10 Q Okay. Let's go back to your work as a tree
11 surgeon. The last company that you worked for, you were
12 working for 'em in 1988, was Davey Tree Company, is that
13 true?

14 A That's correct.

15 Q Now, tell The Court, if you would, when you
16 first went to work for Davey Tree Company and sort of
17 what your working relationship was with them up in the
18 DC/Northern Virginia area.

19 A When I was released from prison in 1980, a man
20 by the name of John Dingus (phonetic) gave me a job,
21 Davey Tree Expert Company, and he gave me a job to do up
22 and down Constitution Avenue in Washington, DC, working
23 on the government contracts, pruning and working on the
24 trees and preparing the trees around the Vietnam
25 Memorial.

1 Q So when you got in trouble and were
2 incarcerated, you obviously quit working that job, is
3 that right?

4 A Yes.

5 Q After you were released from prison after that,
6 were you rehired by Davey Tree Company?

7 A When I was released from prison again in 1987, I
8 went back to work for Davey Tree Expert Company. He
9 hired me back right away.

10 Q And you worked there up until and including the
11 time until you were incarcerated this very last time --

12 A That's correct.

13 Q -- in 1988, isn't that right?

14 A That's correct.

15 Q Now, as you sit here today -- talked about your
16 hearing issues and your issues with your feet. Do you
17 have any other physical problems that effect you
18 currently?

19 A I have Hepatitis C.

20 Q Okay. Is that being treated, or is it just a
21 condition that you --

22 A No. It's not at the stage where it warrants
23 treatment, but it's -- anybody's aware what Hepatitis C
24 will do. It's just there -- it's there.

25 Q Let's talk about the -- Mr. Gray asked you some

1 questions about your mental health treatment history.
2 Let's talk about that a little bit. I believe you
3 testified that you were treated back in the early '70s
4 by different various mental health facilities.

5 A Yes, yes.

6 Q Initially was the treatment court ordered, or
7 was it just something that your parents or you decided
8 you needed --

9 A Initially it was my parents decided because I
10 was becoming disruptive.

11 Q And I think you testified that the problems
12 related to your hearing and problems with your feet and
13 you couldn't -- you know, you were being picked on and
14 so -- that sort of thing at school and it was causing
15 you anger issues. Is that an accurate statement?

16 A Well, I was different and I wasn't able to
17 engage in normal activities with -- the other kids were
18 doing, and they made fun of me occasionally, and when
19 they did, the difference between me and a lot of kids
20 was I'd do something.

21 Q Okay. And through the years, the initial
22 treatment involved that. Then you had this indecent
23 exposure charge and then ultimately ended up at this --
24 you had the indecent exposure charge in 1974. Do you
25 recall whether you underwent any treatment immediately

1 after the indecent exposure charge?

2 A Yes. The court asked that I engage in
3 psychological therapy.

4 Q And you did that?

5 A Yes.

6 Q I mean, you were involved in that treatment?
7 Then you had an abduction charge in 1975, and it's after
8 that when you were -- I assume it was court ordered --
9 you went to the Westbrook Hospital. Do you recall that?

10 A Yes.

11 Q And your testimony was that you -- I believe you
12 said you got caught or were involved with kissing
13 another patient. Is that a true statement?

14 A Yes, it is.

15 Q And I believe you were kicked out or sent out of
16 the hospital for that, and I think they said you were
17 unmanageable. Explain to The Court what you think they
18 meant by unmanageable, if you know.

19 A Basically because when they initially caught me,
20 I refused to respond to it, deal with it.

21 Q But to be clear, this incident at the Westbrook
22 hospital didn't involve sex beyond the kissing accident.
23 Is that a true statement?

24 A With the girl -- in, fact, the girl and I
25 continued to write back and forth together for several

1 years afterwards.

2 Q Then you ultimately went to the Phipps Clinic at
3 Johns Hopkins in Baltimore?

4 A Yes.

5 Q Tell me what you recall about that treatment.
6 Was that court ordered? In other words, you went to the
7 Westbrook Hospital. That was court ordered, isn't that
8 correct?

9 A That's correct.

10 Q Then did you immediately -- to the Phipps
11 Clinic, or did you go back to jail for a period of time
12 before you went to the Phipps Clinic?

13 A Well, we had the -- the court -- I was in jail.
14 The judge had executed a one year sentence, but then
15 when the Phipps Clinic opportunity presented itself, we
16 asked the judge to suspend the sentence to allow me to
17 participate in the program.

18 Q Your attorney at that time asked the judge to
19 suspend the sentence and put you in treatment?

20 A That's right. His name was Richard McMurtry.
21 (phonetic)

22 Q Okay. So you went to the Phipps Clinic. Did you
23 feel like the treatment at the Phipps Clinic was Helpful
24 to you?

25 A I thought it was a good way to get out of jail.

1 It was helpful some.

2 Q And I think you said that in relation to that
3 that you told them -- I believe the record -- just a
4 second. The record reflected that you denied or said
5 that you were wrongfully accused at the Westbrook
6 Hospital in relation to this incident, the kissing
7 incident.

8 A That's what I said. My answer was that it was an
9 issue that was blown way out of proportion, and people
10 always want to say I was removed for a sex problem. I
11 don't consider kissing a sex problem. I consider it a
12 juvenile activity. It may have been against the rules,
13 but, you know, --

14 Q Let's talk about -- well, let's see. Now, after
15 your treatment there, the records reflect that there was
16 some additional treatment at Fairfax County Hospital in
17 1977. Do you recall whether that was a result of you
18 voluntarily going in, or was that court ordered
19 treatment?

20 A I was still under court ordered treatment. I
21 went to see a doctor. I think his name was LeDuff,
22 (phonetic) and he and I saw each other a couple times,
23 but he felt because I was being ordered to go there, it
24 wasn't being beneficial to me.

25 Q Now, you had numerous interactions with the

1 mental health system since you've been in BOP, isn't
2 that right?

3 A Yes.

4 Q And you've been diagnosed with any number of
5 mental illnesses since you have been incarcerated, isn't
6 that right?

7 A Yes.

8 Q Tell The Court, if you would, generally and then
9 specifically when we get to that point specifically
10 certain diagnoses -- what was in general your motivation
11 for seeking mental health treatment while you've been in
12 custody in BOP?

13 A I initially started with the idea that it could
14 be beneficial to me to help me become more -- just a
15 better person, more understanding of myself.

16 Q I think you testified yesterday that it helped
17 you manage your time or manage your ability to be in
18 prison and do your time. Is that a fair statement?

19 A Correct.

20 Q Now, were there some instances where certain
21 things happened to you while you were in BOP that caused
22 you to feign mental illness or make up things to
23 accomplish a goal?

24 A Sure. Since I entered the BOP in 1980 -- '88,
25 I've been engaging in drug use, you know, activities

1 that are just against the BOP, and every now and then,
2 I'd run myself up on a snag. I had to do something to
3 manipulate myself out of that position.

4 Q Well, give me a specific example of when you ran
5 into a snag and needed to manipulate yourself out of a
6 position.

7 A When I was at USP Atlanta, I ran into a big snag
8 because I was using drugs so much and I was having
9 trouble attempting to pay because I was using it so much
10 that I had to feign an illness. I feigned multiple
11 personalities because they were trying to throw me out.

12 Q Okay. So you reported to the psychiatrist or
13 psychologist that was working there in the prison and
14 you acted like there were other -- well, tell The Court,
15 if you would, exactly what you did.

16 A I went down there and told them I was having
17 blackouts, I'd been having 'em since I was young and
18 that I made up some names that I was using to feign
19 multiple personality disorder and did a pretty good job
20 of it. They transferred me.

21 Q Where did they send you to?

22 A Butner.

23 Q Now, this was the first time, I guess, you were
24 at Butner --

25 A 1994 or '95.

1 Q And you spent some time at Butner. Did you
2 receive any sort of treatment for this --

3 A We looked at it, but then they quickly figured
4 out I was BSing.

5 Q And the Government attorney asked you about your
6 request for sex offender -- getting in the sex offender
7 treatment program you've been in the BOP. Do you recall
8 exactly when that was that you requested that?

9 A 1995 when I was at Butner. Yeah, it was at that
10 time.

11 Q And was there a reason why you wanted to get
12 in -- other than receive sex offender treatment, was
13 there any reason other than that why you asked to be put
14 in the program?

15 A Because they had already told me they knew I was
16 feigning mental illness, and they told me that since I
17 didn't want to engage in the proper way or psychological
18 care, that they were going to send me back to USP
19 Atlanta, so I asked her if I could get into a sex
20 offender program.

21 Q And basically USP Atlanta was where you had
22 faked this illness to get out of it, right?

23 A Yeah.

24 Q So you didn't want to go back there?

25 A Well, I had numerous problems there, not to

1 mention the amount of extreme violence that was
2 occurring at that prison -- had killed an officer at
3 that time. It was just out of control.

4 Q Turns out Butner, was it a -- in your opinion as
5 an inmate, was Butner a better place to be?

6 A Well, if you're serving a criminal sentence,
7 things don't get no sweeter.

8 Q Have there been any other incidents where you
9 have feigned mental illness or, as an example, told
10 someone you feel like you're going to commit suicide or
11 something of that nature to avoid or manipulate the
12 system in some way?

13 A I did that at Butner. I did it at USP Beaumont
14 when I ran into a snag at Beaumont and I believe I -- I
15 did it so many times, I just can't recall it anymore.

16 Q Well, just as an example, tell The Court why you
17 would have told them you were suicidal at USP Beaumont.
18 What was the issue there?

19 A I was trying to gain a transfer out.

20 Q And why was that?

21 A Because I was having problems with the Texas
22 Syndicate Mexican group because I was running up a
23 pretty heavy drug bill.

24 Q So it sort of appears to me that there's a
25 pattern when you run into an issue within a --

1 MR. GRAY: Objection. Counsel's testifying.

2 THE COURT: Overruled. It's cross-examination.

3 BY MR. BELL:

4 Q You run into a -- what you call a snag or an
5 issue in a particular facility -- appears to be a
6 pattern that you feign these mental illnesses to try to
7 get a transfer or removed, is that correct?

8 A It was that, and I came up with other good
9 plans, too.

10 Q Talk to The Court about that.

11 A I created a escape plot while at USP Beaumont.
12 I've created incidents where I'd tell the institution
13 that the Aryan Brotherhood was trying to manipulate
14 money from me.

15 Q Were these lies or were these truthful
16 statements?

17 A They were lies.

18 Q Let's talk about this escape plot. It was at USP
19 Beaumont, and, again it was a place you were trying to
20 get out of or you had run into an incident?

21 A I was trying to get out of there.

22 Q Okay. And I believe there was some indication in
23 the record that you had a rope or something made out of
24 bedspreads and other things that could be used to
25 escape, but then there was also a note that was written

1 that ultimately I think they determined was written by
2 you. Is that a true statement?

3 A That's correct.

4 Q And so you essentially turned yourself in before
5 you could escape?

6 A Yeah. I spent a month manipulating that because
7 I braided a rope. I made a gaffling hook. I used six \$20
8 bills. I hid six \$20 bills, actual cash money, and I
9 wrote National Geographic for topographical maps of the
10 Beaumont and -- area so I could have them for evidence.

11 Q So you did all of these things, and then when it
12 was all said and done, you wrote a note and give it to
13 one of the people -- facility people that basically told
14 them what you were planning on doing, is that correct?

15 A Right.

16 Q And this was to ultimately get you transferred
17 out of this facility or you felt like it would get you
18 transferred out of this facility?

19 A And it did.

20 Q Where did you end up going from there?

21 A USP Terre Haute.

22 Q How many different facilities have you been in
23 since you've been in the bureau of Prisons? Do you
24 remember?

25 A FCI Phoenix, FCI Petersburg, FCI El Reno, USP

1 Atlanta, USP Lewisburg, USP Leavenworth, USP Beaumont
2 and then USP Terre Haute.

3 Q Okay.

4 A I forgot Butner. I was at Butner for a minute
5 too in between Atlanta and Lewisburg.

6 Q You were at Butner for a minute. What do you
7 mean by that? A short period of time?

8 A Yeah. Almost -- seven or eight months.

9 Q Okay. Now, in each situation where you moved,
10 was it always that you sort of manipulated and got a
11 transfer approved or caused a transfer, or were there
12 times when you were just moved as a matter of course?

13 A No. I was moved because I was either being
14 disruptive or trying to get out of there.

15 Q And you would do this because you had a problem
16 or something in that particular facility?

17 A Run into issues that I couldn't manage any
18 further.

19 THE COURT: Folks, why don't we take our
20 break? Let's reconvene in about ten minutes at 10:40.

21 (Whereupon off the record.)

22 THE COURT: Mr. Bell?

23 MR. BELL: Thank you, Your Honor.

24 BY MR. BELL:

25 Q Mr. King, before we took our morning break, we

1 were talking about the various facilities that you have
2 been in and transfers that you have had with the
3 different transfers that have occurred since you've been
4 incarcerated in 1988, and I believe your testimony was
5 that in most every instance, it was a situation where
6 you tried to manipulate and get moved because you had an
7 issue at that particular facility.

8 A That's right. There was only one or two that
9 wasn't.

10 Q Now, you've been diagnosed with numerous
11 different mental illnesses since you have been
12 incarcerated. I'm going to ask you -- I'm going to go
13 through the ones that I have got listed here and see if
14 you remember when you were diagnosed and what the
15 circumstances were surrounding it.

16 A Okay.

17 Q It appears that at one point in time you were
18 diagnosed with a psychotic disorder not otherwise
19 specified. Do you have any idea when that occurred or
20 what the circumstances were around that?

21 A That could have been Lewisburg. I believe it
22 might have been Lewisburg. I honestly don't remember.

23 Q Do you have any idea who it was that diagnosed
24 you with that mental illness?

25 A No, not at this time I don't.

1 Q And you mentioned multiple personality disorder.
2 We have already talked about that, that was involved
3 with a doctor at USP Atlanta, is that right?

4 A Doctor Timberlake.

5 Q There's a diagnosis of schizophrenia. Do you
6 have any recollection of when that took place or what
7 the circumstances were surrounding that?

8 A I think that was El Reno.

9 Q If you would, tell The Court about your
10 interaction with the mental health professional there.

11 A There was a lot of things going on at El Reno,
12 violence, drugs, what not, so I started manipulating the
13 psychology department saying that I had to get
14 treatment. I even went as far as to have them put me on
15 Haldol.

16 Q What did you take that for? What was it supposed
17 to --

18 A Well, I was saying I had schizophrenia and I was
19 hearing voices.

20 Q So they prescribed you Haldol?

21 A They gave me one milligram of Haldol.

22 Q Okay. And you were diagnosed with hallucinosis
23 not otherwise specified. Do you have any recollection of
24 when that may have been where you may have told somebody
25 you were hearing or seeing things?

1 A That might have been Beaumont.

2 Q Do you have any reason for why you would have
3 told them that you were seeing or hearing things?

4 A I was trying to see if they could do anything to
5 get -- to help me -- get me out of there.

6 Q Did you end up ultimately getting out of
7 Beaumont? Let's back up a little bit. If you can
8 remember -- and you may not be able to, but if you can,
9 are the facilities that you have been in and -- sort of
10 generally when you were there when you first in 1988
11 were incarcerated, where did you first go? What facility
12 did you first go to?

13 A I first went to FCI Phoenix, Arizona.

14 Q Do you remember how long you were in?

15 A Almost a year.

16 Q And after FCI Phoenix, where did you go?

17 A Petersburg, Virginia.

18 Q Do you remember how long you were there?

19 A Several years. I was there for a couple years,
20 and then they sent me back to the DC Department of
21 Corrections in 1991.

22 Q Why was that?

23 A Because the contract had expired. I was under a
24 contract and the BOP -- and contract had expired, so
25 they had to send me back, but I eventually manipulated

1 that back into the Bureau of Prisons.

2 Q How did you do that?

3 A I feigned multiple personalities in DC
4 Department of Corrections.

5 Q They sent you back to --

6 A Back to Petersburg.

7 Q After Petersburg, where did you go?

8 A El Reno.

9 Q How long were you there?

10 A Almost a year.

11 Q After that, where did you go?

12 A Atlanta.

13 Q How long?

14 A I was there from '93 to end of --

15 Q I believe you testified you went to Butner
16 for -- you called it a minute or --

17 A Seven or eight months.

18 Q And then you were sent back to Atlanta after
19 they found out you were malingering and feigning
20 illness, right?

21 A That's correct.

22 Q How long were you in Atlanta the second time
23 around?

24 A I was in Atlanta long enough to get caught
25 with -- weapon and then get transferred to USP

1 Lewisburg.

2 Q How long were you at USP Lewisburg?

3 A Less than six months.

4 Q Then where did you go?

5 A USP Leavenworth, couple years. I was at
6 Leavenworth from '96 or '98 or 9.

7 Q Then you left and went where?

8 A USP Beaumont.

9 Q -- then where did you go?

10 A Terre Haute.

11 Q Is that the last facility you were in prior to
12 coming to Butner in 2009?

13 A That's correct.

14 Q So if I calculated that right, you were at Terre
15 Haute the longest --

16 A The longest.

17 Q -- at any facility you were in, is that correct?
18 Let's go back and talk a little bit about your 1988
19 offense and the presentence interview process and the
20 information that you testified was false that you gave
21 to the probation officer that went into the presentence
22 report.

23 A Okay.

24 Q While you were in custody waiting to be
25 sentenced in that case, you were in the DC jail, is that

1 right?

2 A That's correct.

3 Q Did something happen to you at the DC jail that
4 affected your -- whether or not you wanted to stay in
5 the DC system?

6 A Yes. I was assaulted by three inmates and
7 sexually assaulted.

8 Q And this occurred while you were waiting to be
9 sentenced, so did it affect your desire to be placed in
10 the Federal BOP versus the DC system?

11 A It helped to -- first of all, let's go back. I
12 was arrested -- this happened in 1984 when I was
13 arrested on simple assault and carrying -- deadly weapon
14 charge. That's when I was assaulted.

15 Q Okay.

16 A And at that point on, I did everything I could
17 to stay away from the DC Department of Corrections.

18 Q Was it your understanding that if you needed
19 mental health treatment of some kind, whether it be
20 sexual treatment or otherwise, was it more likely or
21 less likely for the judge to recommend that you be
22 placed in the Federal system?

23 A Yes, it would.

24 Q More likely or less likely?

25 A If you needed it, it was more likely.

1 Q And ultimately when you were sentenced in 1988
2 for the last offense, you were placed -- designated to
3 the Federal system, is that right?

4 A Yeah. My judge -- made a recommendation that I
5 be given a Federal designation, which took maybe six or
6 seven months for it to occur, but the BOP finally
7 accepted me and brought me into the Bureau of Prisons.

8 Q Now, since you have been incarcerated, you've
9 had all these various places -- other than the incident
10 in 1993 involving a statement to the staffer about
11 touching your penis, have you had any sort of
12 disciplinary infraction, charge, anything like that of a
13 sexual nature?

14 A No, I have not.

15 Q You've had other infractions, is that right?

16 A Yes.

17 Q It appears from the record it's mostly related
18 to drugs and use of drugs and drugs being in your
19 system, is that correct?

20 A Drugs and use of intoxicants, alcohol.

21 Q You're a bisexual, aren't you?

22 A Yes, I am.

23 Q And you have actually had homosexual
24 relationships with other inmates since you have been in
25 the Bureau of Prisons, is that right?

1 A Yes.

2 Q Specifically I think there's something in the
3 record about a gentleman in -- is it Terre Haute?

4 A USP Leavenworth.

5 Q -- where there was some sort of issue about
6 keeping you separated from him. Do you remember that
7 that was a --

8 A It came to the attention of the staff due to the
9 use of drugs.

10 Q Okay. Have you had other sexual partners since
11 you've been in the BOP?

12 A Indiscreetly, yes.

13 Q Have you ever had any sort of charge,
14 disciplinary action, infraction, anything related to any
15 sort of improper sexual conduct with a male inmate or
16 staffer?

17 A No, I have not.

18 Q Okay. Let's talk a little bit about the 42 --
19 Section 4248 precertification process and your testimony
20 regarding that. You testified -- well, let me ask you
21 this. When did you first find out that you were a
22 potential person to be precertified as a 4248 inmate?

23 A USP Terre Haute -- and at the beginning of
24 2009, I went to my unit team, asking them to start
25 preparing for my release because my date was coming up

1 within a year or so, and under the law, I was eligible
2 for a six month halfway house, so I wanted to get
3 started. And then I found out that they told me we can
4 do the paperwork, but you have got to be reviewed for
5 Adam Walsh. I had no idea what it was, so that's why I
6 started researching.

7 Q Tell The Court, if you would, a little bit about
8 what you did, how you got the information, where you got
9 your information about -- what sort of information you
10 received.

11 A Most institutions have an excellent law library,
12 and then I started writing letters to different places,
13 different states, California, New Jersey, and I started
14 finding out about the civil commitment programs and I
15 did research on the 4248 law, 4247. I found out what the
16 Adam Walsh law was all about.

17 Q And in the course of doing that, did you find
18 out, you know, what types of programs existed in, for
19 instance, California, New Jersey, other places like
20 that?

21 A Absolutely.

22 Q And what was your understanding of what those
23 programs involved?

24 A What was involved?

25 Q I think you testified -- but just clarify a

1 little bit exactly what you understood 'em to be.

2 A The process of the program itself was that New
3 Jersey, California, even Kansas where each -- came out
4 of in Washington State, the inmates, once they're
5 released are placed in the care of Health and Human
6 Services -- not within the Department of Corrections.

7 Q Why does that make such a big difference to you?

8 A Because you've done your time. I've been
9 punished.

10 Q How would that affect your impression of how you
11 would do the time or how you would be treated?

12 A Department of Corrections does not know how to
13 run a treatment program. The treatment program they have
14 had -- programs they have had are failures. They don't
15 work. It doesn't work, and now they are still trying to
16 operate a civil commitment program within the BOP
17 guidelines when you're not serving a sentence.

18 Q When you say within the BOP guidelines, let's
19 just say on a daily basis, are you treated any
20 differently today than you were prior to January 20,
21 2010, I mean, as far as your privileges, what you can
22 and can't do?

23 A Absolutely. I've got less movement now than I
24 had when I was at the penitentiary -- as a maximum
25 custody inmate, I had more freedom of movement. I can't

1 be around the general population inmates, yet like last
2 night they put me in general population in the county
3 jail. I'm not an inmate. I'm a civilian.

4 Q But back in 2009 when you started researching
5 and looking at those other programs, California, New
6 Jersey, so forth, was it your feeling or your
7 understanding that it would not be as it is today?

8 A Yes. I read that some places get minimum wage.
9 They -- they get their privileges -- they're in a
10 therapeutic environment. They are not under Department
11 of Corrections. They don't have BOP -- they don't have
12 correctional staff around. They have therapeutic staff.
13 Their clothing -- I mean, I could go on for hours and
14 tell you the differences, but it's unbelievable.

15 Q And your feeling at that time or your
16 understanding at that time or your anticipation was that
17 that's the sort of program that the Federal 4248 program
18 would be?

19 A Yes. They weren't giving up any information,
20 because I asked. I said -- I wanted to know what the
21 program was in the BOP. Nobody would tell me. All they
22 said was they had a CTP program at Butner that has their
23 own unit. It's civil committed -- treatment program CC,
24 something like that, and so --

25 Q I think you testified that you really didn't

1 have any family to speak of. I mean, you hadn't had any
2 contact with your ex-wife in how long?

3 A Twenty some years.

4 Q You hadn't had any contact with your brother --

5 A No.

6 Q And I think it was since early 2000, correct?

7 A Numerous years.

8 Q Your parents were deceased. You had been locked
9 up for -- at that point 22 years, correct?

10 A On that instant offense, yeah.

11 Q I mean, the last extended period of time was 22
12 years, correct?

13 A Yes.

14 Q What you told -- you talked to your -- you say
15 your unit team. What were you told as far as, you know,
16 where you would likely be placed once you were released
17 if you were released in January of 2010? What were you
18 told as far as where you would be placed?

19 A The situation was because I'm a DC -- offender
20 that I was going to have to go to a halfway house in
21 Washington, DC. I was eligible for six months, and I
22 might get some of that, I wouldn't get all six months.
23 And then I would have to go to a homeless shelter to
24 live if I didn't have a home.

25 Q And did this concern you?

1 A Sure did.

2 Q Tell The Court, if you would, why you were
3 concerned about that.

4 A Well, par for the course. All homeless
5 shelters -- in the brightest district. I mean, there's a
6 couple up in DC right in the middle of the drug
7 district, and with my history, it wouldn't have worked
8 out too good.

9 Q So your testimony is if you're out and drugs are
10 available to you, you may have a problem with that?

11 A That -- most certainly.

12 Q Okay. And so you made the decision or at least
13 your testimony was you made the decision at that point
14 in time that perhaps as opposed to going to the DC
15 halfway house and then ultimately a homeless shelter of
16 some kind that you would try to get into this 4248
17 program?

18 A I mean, there was other factors involved, too.
19 One, that the economy as it was at that time -- it still
20 is a mess. I'm a 57 year old man coming out of prison
21 with -- serious felony conviction -- have a hard time
22 getting a job. I'm getting older. I could have got a job
23 somewhere, but I was really concerned I had no support.
24 What do you call -- want to call -- or group behind me,
25 nothing. So I've been in prison so long, actually,

1 minus three years since I was 17, I know how to operate
2 in an institutional environment. I can work. I work
3 every day. On the street, I probably wouldn't have a
4 job.

5 Q And that's important to you?

6 A Sure, it is. I've worked all my life. I don't
7 have trouble working, and I want to work, but I also
8 want to be free some days. But I say to myself I don't
9 want to go out there and live on the street. I don't
10 want to do that. I've got too much pride for that.
11 These people can take care of me. If that's how it's
12 going to be, I'm good with that, because they feed me,
13 they clothe me, and I can work.

14 Q And so during the evaluation process leading up
15 to your precertification as a 4248 inmate, you first met
16 with a Doctor Bazerman -- Bazerman. Do you recall that?

17 A Doctor Bazerman.

18 Q And Doctor Bazerman conducted an interview of
19 you. Was it in person, or how did that interview take
20 place?

21 A I was in the special housing unit at USP Terre
22 Haute for one of my frequent visits for a dirty urine,
23 and I could do it over the telemonitor.

24 Q And when Doctor Bazerman interviewed you, she
25 asked you about the offense that you had in your

1 history --

2 A Right.

3 Q -- and went all the way back, and I believe you
4 told her that even though the 1978 offense was not a
5 "statutorily sexual offense", that it was sexually
6 motivated. Did you tell her that?

7 A Yes, sir, I did.

8 Q Was that a true statement?

9 A No.

10 Q And the 1983 offense, even though it was not a
11 statutorily sex offense, you told her that it was a
12 sexually motivated offense, didn't you?

13 A Yes, I did.

14 Q And was that a true statement?

15 A No, it's not.

16 Q And this latest, the last offense, the offense
17 that you are currently incarcerated on, the 1988
18 offense, you told her that was also sexually motivated,
19 as you told the probation people back when you were
20 originally sentenced, is that right?

21 A That's correct.

22 Q Was that a true statement?

23 A No.

24 Q In fact, the record would reflect that in that
25 particular case, the victim even indicated that you had

1 asked for money or do you have money or do you have a
2 lot of money, isn't that true?

3 A That's correct.

4 Q Okay. You also told Doctor Bazerman that you had
5 committed sex offenses for which you had not been
6 caught. Did you tell her that?

7 A Yes, I did.

8 Q Was that a true statement?

9 A No, it's not.

10 Q Then I believe you said something about
11 returning to Terra Haute on death row or you'd be
12 returning to Terra Haute, but it would be on death row.
13 Why did you say that to her?

14 A Basically because my -- my reasoning here is
15 that being a four or five time convicted felon, it
16 doesn't matter what I do. I'm going to prison for life.
17 It doesn't matter if I hurt somebody or kill somebody.
18 I'm going to do life, so death row or however makes no
19 difference.

20 Q Now, did you really mean that you were going to
21 go out and kill somebody?

22 A I'm not saying I'm going out to kill somebody,
23 no. Reality dictates if you are in prison and you have
24 got four or five convictions -- felonies, you know that
25 if you get caught, you're going to prison for life.

1 Q You don't have any legal training or anything.
2 You're just saying that that's your understanding?

3 A You don't have to. Prisons and penitentiaries
4 are full of 'em right now.

5 Q Okay. And then later in this interview with
6 Doctor Bazerman -- by the record occurred July 31st of
7 2009. You were later interviewed by Doctor Graney who is
8 here in the courtroom today. Do you see her?

9 A Yeah.

10 Q Was there more than one interview with Doctor
11 Graney?

12 A I think we had maybe three or four sessions. I
13 don't recall exactly how many.

14 Q But it was over the course of several days?

15 A A couple weeks, two weeks or so maybe.

16 Q And, again, you testified earlier about many of
17 the things that you said to her, correct?

18 A Yes.

19 Q And specifically with regard to the 1978 offense
20 being sexually motivated, you told her that it was,
21 correct?

22 A Yes, I did.

23 Q Was that a true statement?

24 A No, it's not.

25 Q The 1983 offense, was that a true statement that

1 that was sexually motivated?

2 A No, it's not.

3 Q And the 1988 -- the one you're in jail for now,
4 was that a sex -- you told her that, correct?

5 A Yes, I did.

6 Q Was that a true statement?

7 A No, it's not.

8 Q You also told her that the -- that you had
9 committed sex offenses for which you had not been
10 caught, is that correct?

11 A Yes, I did.

12 Q In fact, you told her that you had abducted
13 people three times a month since you were 15 years of
14 age, is that correct?

15 A Yes. I said that.

16 Q Now, of course, you were incarcerated for much
17 of the time --

18 A If that was possible, I'd --

19 Q So your -- but your testimony is that you had
20 committed sex offenses while you were in the community
21 the periods of time when you were not incarcerated,
22 correct?

23 A Yes.

24 Q So there was about a two year period of time and
25 then maybe another two year period of time when you were

1 out of jail since you have been 15 that you told her you
2 had committed three sex offenses a month? You said that
3 to her?

4 A Yes, I did.

5 Q Was that a true statement?

6 A No, it's not.

7 Q Now, at some point in time between when you
8 first found out that you were a potential targeted
9 person to be looked at as far as being certified under
10 the Adam Walsh Act and a later period of time when you
11 decided it was not something you wanted to do, something
12 happened. You received a letter, had some contact with
13 Ms. King. Tell The Court, if you would, about that.

14 A Well, my ex-wife, Marlene, sent me a
15 correspondence because she was wondering why I hadn't
16 been released. She had checked the BOP thing. You can go
17 on the web and check the BOP -- where people are at, and
18 she realized I had not been released. She knew my
19 release date -- been keeping up with that. So I wrote
20 her and told her what the situation was. She started
21 writing me back. She told me if I needed support in the
22 community, she would be there for me, help support me.

23 Q And, in fact, she offered to let you come live
24 with her?

25 A She said I could get a job, rent a room from her

1 and stay there, so we tried to do a relocation from
2 District of Columbia to Virginia which would allow me to
3 fall under the Federal guidelines -- DC code, and the
4 Federal people rejected it.

5 Q Now, as you sit here today, you testified that
6 you do not want to live with Ms. King, is that true?

7 A No. That's not what I want to do for real. I was
8 willing to give it a shot because I need some place to
9 go to hang my hat for a minute, and renting a room from
10 her would take some of the power away from her
11 for control. That would just be a business situation.

12 Q But you've now determined that that probably is
13 not something that would be useful to you, is that
14 right?

15 A Yeah. We still communicate, and she's a
16 wonderful person, but she's still very manipulative and
17 bossy and I just can't take it.

18 Q Now, at what point in time did you make the
19 decision, if you recall, that the 4248 program which you
20 testified you were trying to get certified into was not
21 somewhere where you wanted to be?

22 A It didn't take long. When I was released from
23 the special housing unit when my sentence ended and they
24 allowed me to go to the Maryland unit, I realized within
25 30 days it was a joke.

1 Q Okay.

2 A It was a joke.

3 Q In other words, it was not as you had
4 anticipated it being, similar to, say, California, New
5 Jersey, --

6 A I realized --

7 Q -- the research you had done?

8 A Correct. The thing that hit me the most was that
9 I was still in prison. I could still receive incident
10 reports. I could still go to the SHU, special housing,
11 lose privileges when they don't have that authority to
12 do that, --

13 Q Okay.

14 A -- because I'm not serving a sentence. I don't
15 know where they get the authority to do these things
16 that they're doing. They still made me -- they can't --
17 I'm still only getting paid what prisoners get paid.

18 Q How much is that?

19 A I make \$35, maybe \$40 a month.

20 Q And you work how many hours a day?

21 A I work seven and a half hours a day.

22 Q And you make 35 or 40 dollars a month?

23 A Yes. I work in a bakery. That's prison pay.

24 Q And at that point in time -- well, there's been
25 several instances where you have recanted the statements

1 that you've made not only to -- well, to Doctor Graney.
2 You wrote a letter, I guess two letters, indicating that
3 those statements that you made were untrue, is that
4 correct?

5 A I think it was around April of 2010 that I
6 said -- recanted my statements.

7 Q And were you represented by counsel at that
8 point in time?

9 A No, I was not.

10 Q When was it that you first were appointed
11 counsel?

12 A I was certified on January 19th, and I never
13 received counsel until June of 2010.

14 Q Okay.

15 A I was appointed to the Federal Public Defender's
16 office.

17 Q So the first letters or these letters that you
18 wrote recanting your statements saying they weren't true
19 and so forth came sometime before you were appointed
20 counsel?

21 A That's correct.

22 Q Now, if you are released -- after this
23 proceeding -- ultimately you're released, do you have
24 any knowledge how long -- about how long you will be
25 on I guess it would be parole or supervised release?

1 A It's been a while since I looked at my
2 paperwork, but I believe -- 2024 or 23 that I'm still on
3 supervision.

4 Q How restrictive is your supervision as you
5 recall it?

6 A Parole Commission has given me the strictest
7 guidelines I can possibly receive. They have even stated
8 they don't want me to have a driver's license, and I'm
9 fine with that.

10 Q Well, tell The Court as you recall what sort of
11 the guidelines are that you would be --

12 A -- stipulated that I would receive drug -- what
13 do you call it? Drug counsel -- not counseling, but
14 when you get UA --

15 Q What's a UA?

16 A Urinalysis and outside -- going to drug
17 counseling and alcohol counseling. I have to receive
18 psychological treatment at my expense, and I also have
19 to register as a violent offender under the Violent
20 Offender law that came out in '95 or so. I have to
21 register as a violent offender. They didn't say anything
22 to me that I recall about registering as a sex offender,
23 because I couldn't. I don't have a sex offense, but they
24 did say they wanted me to take sex offender treatment.
25 They did say that in their paper.

1 MR. BELL: Your Honor, if I can have just a
2 minute --

3 THE COURT: All right, sir.

4 BY MR. BELL:

5 Q Mr. King, one of the statements that you made to
6 Doctor Graney involved your methodology for these
7 abductions that you say that you did that you, I guess,
8 weren't caught for, and one was that you would wear -- a
9 couple of things was that you would wear a mask and use
10 notecards. Is that what you told her?

11 A Yes, I did.

12 Q And you also indicated those statements were not
13 true, correct?

14 A Yes.

15 Q Now, you have been arrested several times for
16 abduction, various abductions up until 1988. In any of
17 those abductions where you were actually arrested, was a
18 mask of any kind found that you're aware of?

19 A No.

20 Q Were there any notecards or anything like that
21 found that you're aware of?

22 A No, there was not.

23 Q And the case where various items were found in
24 your vehicle, the ropes and the handcuffs and knives and
25 so forth, the axe handle that was under your seat, was

1 there a work purpose for that axe handle? What did you
2 use that for?

3 A That axe handle is actually what they call a
4 tree lopper. It has a part that sits on top of it that
5 you hold and you hit small limbs with it and knock 'em
6 off as you climb up a tree.

7 Q So your testimony would be that that axe handle
8 was a part of a tree lopper that you used in your work?

9 A I take the top of it off and put it underneath
10 the seat and take it back and forth to work because it's
11 my personal tool.

12 Q Was it typical for guys that did the work that
13 you did, work for tree companies, to have some of their
14 own personal tools and then the company would have their
15 own tools as well?

16 A Oh, sure. I had my own chainsaws and ropes to
17 climb and spikes, everything.

18 Q Okay. If you'd look at -- I'm going to have to
19 hand it to you.

20 MR. BELL: Your Honor, may I approach the
21 witness with an exhibit?

22 THE COURT: You may.

23 MR. BELL: Thank you.

24 BY MR. BELL:

25 Q Mr. King, I'm going to hand you what's been

1 marked for identification as Respondent's Exhibit 21,
2 and could you tell me what the title of that document is
3 there?

4 A The Coalinga State Hospital Civil Detainee
5 Patient Rights.

6 Q Now, is this document something that you
7 obtained during your research related to civil detention
8 and civil detainees?

9 A Yes, it is.

10 Q And the document talks about various rights that
11 civil detainees have?

12 A That's correct.

13 Q In fact, it refers to 'em I believe in the
14 second line -- civil detainee patient rights, is that
15 true?

16 A That's exactly what it says.

17 Q And if you read through, it discusses the
18 various rights and so forth. Was this a document that
19 you read and understood or felt like would be similar to
20 the rights and so forth that you would have as a Federal
21 civil detainee?

22 A Yes. One of the most influencing issues about it
23 is is that as you read through this, there's so many
24 Federal laws governing this that they have been ruled
25 and -- and by US law, the Supreme Court and the CFR, and

1 I think to myself that if that's the case, the Federal
2 Government's got it going on because I might have it
3 made.

4 Q Okay.

5 MR. BELL: I don't have anything further, Your
6 Honor.

7 THE COURT: Thank you, sir. Mr. Gray?

8 MR. GRAY: Yes, Your Honor, briefly.

9 EXAMINATION

10 BY MR. GRAY:

11 Q Mr. King, Exhibit 21, this is a document that
12 you were looking at when you were doing your research?

13 A I'm sorry. Would you start over again? I missed
14 some of that.

15 Q Mr. King, Exhibit 21, that's the document you
16 were looking at when you were doing your research?

17 A Yes.

18 Q And, Mr. King, you testified with the
19 questioning from Counsel that you made comments to
20 Doctor Bazerman which were lies.

21 A Correct.

22 Q And you made these statements to him with the
23 intent of trying to get into the SOTP program because of
24 the research that you had performed using things like
25 Exhibit 21, right?

1 A It was the civil commitment training program,
2 not the SOTP, yes.

3 Q And these are similar to the lies that you told
4 Doctor Graney with regard to acts of conduct that you
5 had engaged in?

6 A Yeah. I actually saw Doctor Bazerman prior,
7 before I saw Doctor Graney.

8 Q And is it your testimony then that, you know,
9 when you were talking with doctors about your sexual
10 urges that you were lying to them to try to get some
11 ulterior motive accomplished?

12 A That's correct.

13 Q For instance, when you talked to the presentence
14 officer, your ulterior motive was to try to get a
15 lighter sentence, right?

16 A That and the fact that throughout the years of
17 my -- since the incidents happened in '74 and '75 where
18 I received lighter sentences for the crimes that I
19 committed, to me it was obvious that if you have a sex
20 offense or if you've got some issues, you're going to
21 get a lighter sentence, and it seemed to be working.

22 Q And when you were in these other facilities, for
23 instance, like when you were in FCI Atlanta, you lied
24 about your mental health history in order to get from
25 Atlanta to another facility. In this case, it was

1 Butner, isn't that correct?

2 A That's correct.

3 Q And it's your testimony that when you were --
4 was it USP Beaumont in Texas you conducted this plan of
5 faking an escape so that you could get transferred out
6 of Texas to another facility?

7 A Yes, I did.

8 Q So when we have these issues of misconduct or
9 lying, you're doing it for another purpose, isn't that
10 right?

11 A That's correct.

12 Q Now, there were times when you were honest with
13 some of your psychologists and treatment providers,
14 right?

15 A I'm sure there was times, yes.

16 Q And when -- those would be times when there
17 wouldn't be any real motive to gain, right?

18 A There were times when I felt -- like when my
19 parents passed on, when you start feeling depressed in
20 prison, which isn't hard to do, there's issues you want
21 to go speak about, and that's what you do.

22 Q And you didn't fabricate anything to get out of
23 Terre Haute, did you?

24 A No. I -- my time was up. I was getting ready to
25 leave and then I got sent to Beaumont -- I mean, excuse

1 me, Butner.

2 Q And you were generally pretty happy at Terre
3 Haute, right?

4 A That was a pretty good joint for a penitentiary.

5 Q And there were drugs there, weren't there?

6 A Absolutely. I caught several dirty urines there.

7 Q And you were using a lot of drugs there?

8 A Yes, I was.

9 Q But it's your testimony that you didn't want to
10 move to a halfway house in DC because you were concerned
11 you were going to be around drugs?

12 A No. I didn't mind the halfway house, but it was
13 upon the completion of the halfway house that I -- if I
14 did not have a residence in the District of Columbia
15 that I would have to go to a shelter.

16 Q And you were concerned that the shelter was
17 going to be in a place that had drugs?

18 A That and the fact that with the economy as it
19 was, I didn't know how I was going to afford anything.
20 DC is not cheap.

21 Q So overall your time at Terre Haute was pretty
22 good? You were on your way out?

23 A Yep.

24 Q You were getting some mental health treatment
25 during that time, right?

1 A No, not while I was at Terre Haute.

2 Q Oh. Would you turn in that binder to Exhibit
3 Number 34 for me, please? And what I'm going to do is
4 I'm going to put that on the screen so that you have a
5 chance to see it.

6 A What number was that again?

7 Q Exhibit Number 34. And if you would turn to page
8 1970, I have it up on the screen for you in case you're
9 having trouble.

10 A It's not here.

11 Q It may be one of the ones that's missing --
12 Okay. I have up on the screen for you. Exhibit Number
13 34 has on -- that Mr. King was seen in SHU or --
14 psychiatry clinic consult. You were in the SHU at the
15 time of this interview, correct?

16 A Is this in Terre Haute?

17 Q It's in 2000.

18 A I was still at Beaumont. I was in Terre Haute in
19 2001.

20 Q So you were at Beaumont at this point in time?

21 A That's correct.

22 Q And while you were at Beaumont, you were telling
23 the staff that you had had some anger, anxiety issues?

24 A That's right.

25 Q And that you had had some problems since your

1 teen years, correct?

2 A Yes.

3 Q That you were charged with abduction and
4 attempted murder?

5 A Yeah, I see that it.

6 Q And that you feel that you have eight years to
7 serve left on your commitment, right?

8 A Yeah, that's what it says.

9 Q And you've been inpatient at Johns Hopkins for
10 about 15 months, right?

11 A Yes.

12 Q And that you stated to the treatment provider
13 that you have no remorse?

14 A That's what it said.

15 Q And that you also told the treatment provider
16 that -- you have a history of exhibitionism,
17 aggressiveness, et cetera?

18 A That's on here. I see it. Okay. Yes, yeah.

19 Q But you're probably saying this to get out of
20 something, right?

21 A Looks like I was trying to get some -- yes, I
22 was on my way back out of Beaumont. I was probably in
23 the SHU when I did this.

24 Q But you were trying to do it in order to get
25 something out of it?

1 A Yes.

2 Q And, Mr. King, all those statements that are
3 lies, there's an ulterior motive behind them, yet you
4 still feel as though there's no risk of sexual offense
5 from you in the future?

6 A There's no risk of sexual offense, no.

7 Q And that the only reason why you told those
8 stories about being a hibernating bear, the nature --
9 your victims, the modus operandi, your senses of elation
10 and euphoria you get from controlling and dominating
11 women, you said all of those things because you had done
12 your research and you had found out that a civil
13 commitment setting was supposed to be a very nice
14 setting and you wanted to stay there?

15 A That's correct.

16 Q And as a result of that research, you said I
17 want to go to a civil commitment program, right?

18 A That's right.

19 Q So you were willing to say what you needed to
20 say in order to get there?

21 A That's correct.

22 Q And then when you got to Butner, you found out
23 that it was not going to be like you had read in the
24 civil commitment research, right?

25 A Well, that and the fact that I discovered that

1 is it not anywhere close, but also I discovered that as
2 per the law of Adam Walsh, the states weren't taking any
3 -- so in other words, in order to -- civilly committed
4 to take me, they are not going to take me, so I'm stuck
5 in prison here. The states are not taking anybody, so
6 that was a mark against it, too, because I did enough
7 research to the law to realize that's what's supposed to
8 happen. They are not even supposed to be -- to have a
9 CTP program, but they do, and it's garbage.

10 MR. GRAY: No further questions, Your Honor.

11 THE COURT: Mr. Bell?

12 MR. BELL: Nothing further, Your Honor.

13 THE COURT: Very good. You may step down, Mr.
14 King. Is there any further evidence from the Government,
15 Mr. Gray?

16 MR. GRAY: Yes, Your Honor. At this time, we
17 would like to call Doctor Graney. We anticipate that her
18 testimony will take about 45, 40 minutes on our end.
19 We just want to let The Court know that. I know we're at
20 about 11:30 and there's probably some timing issues in
21 terms of logistics that you want to think about, but we
22 anticipate if we do get started, we will be able to
23 complete our presentation of her prior to any lunch
24 break.

25 THE COURT: That will be fine.

1 MR. GRAY: Thank you, Your Honor.

2 DAWN GRANEY, PSY.D, having been duly sworn,
3 was examined and testified as follows:

4 COURT CLERK: Please state and spell your name
5 for the record.

6 THE WITNESS: My name is Dawn Graney,
7 G-R-A-N-E-Y.

8 THE COURT: Mr. Lockridge?

9 MR. LOCKRIDGE: Thank you, Your Honor.

10 EXAMINATION

11 BY MR. LOCKRIDGE:

12 Q Good morning, Doctor Graney.

13 A Good morning.

14 Q Where are you employed?

15 A I'm employed with the Federal Bureau of Prisons
16 and I'm currently -- my current duty station is Federal
17 Correctional Institute in Butner, North Carolina.

18 Q And you're employed as a psychologist there?

19 A Correct, as a sex offender forensic
20 psychologist.

21 Q How long have you been a licensed psychologist?

22 A Since 2003.

23 Q How long have you been working with sex
24 offenders in the capacity of evaluating them?

25 A Since two -- about 2008 and then -- had done

1 some work with them as a general population psychologist
2 prior to that time.

3 Q And your duties there at Butner involve
4 evaluating sex offenders?

5 A Yes.

6 Q For civil commitment purposes?

7 A Correct.

8 Q How many evaluations have you done today?

9 A About 14.

10 Q And are you familiar with the Adam Walsh Act,
11 Law 4248?

12 A Yes.

13 Q Are you familiar with the regulations governing
14 that law?

15 A Yes.

16 MR. LOCKRIDGE: Your Honor, for the sake of
17 expediency, we would tender her as an expert in forensic
18 psychology.

19 THE COURT: Any objections, Mr. Bell?

20 MR. BELL: Your Honor, I've reviewed her
21 credentials and so forth. We have no objection.

22 THE COURT: Doctor Graney, I have one
23 question, and that is can you tell me the difference
24 between the degree that you have which is PSY.D as
25 opposed to Ph.D as opposed to MD -- psychiatrist would

1 have?

2 THE WITNESS: Of course. A psychiatrist does
3 have a doctorate or degree in medicine and they are able
4 to prescribe medication, and they typically focus their
5 treatment around medication and do less in the way of
6 therapy typically. An individual with a doctorate of
7 philosophy in psychology, a lot of times there's more of
8 a research background there, whereas a doctorate of
9 psychology does usually more clinically focused --

10 THE COURT: And that's your degree, a
11 doctorate of psychology?

12 THE WITNESS: Correct. And psychologists
13 typically do more in the way of psychological testing
14 than would a psychiatrist.

15 THE COURT: I see. Very good. Mr. Lockridge,
16 you tendered Doctor Graney as an expert in the specific
17 field of forensic psychology. Very good. The Court
18 recognizes Doctor Graney as an expert in the field of
19 forensic psychology.

20 MR. LOCKRIDGE: Thank you, Your Honor.

21 BY MR. LOCKRIDGE:

22 Q Doctor Graney, are you familiar with the
23 respondent, Daniel King, in this case?

24 A I am. So in 2009, I conducted a precertification
25 forensic evaluation on Mr. King, and then most recently

1 this year, I completed an updated forensic evaluation on
2 Mr. King.

3 Q Could you briefly turn to tab two in your
4 binder, Government Exhibit Two? And do you recognize
5 that document?

6 A I do.

7 Q What is that?

8 A That is my forensic evaluation of Mr.
9 King from August of this year.

10 Q And also tab three, is that a supplement to your
11 August, 2011 evaluation?

12 A Yes.

13 Q And, finally, going back to tab one, is that
14 your precertification report?

15 A Correct.

16 Q When did you do that report?

17 A The report was written in November, 2009.

18 Q Can you just explain briefly what the difference
19 is between those two reports as far as timing?

20 A Yes. Under the Adam Walsh Act, the Bureau of
21 Prisons reviews any individual who is preparing for
22 release who has a history of sexual misconduct, and
23 Sexual Offender Certification Review Branch, which is
24 based out of Washington, DC, does an initial review of
25 the cases. They look through the individual's records.

1 They usually do an initial scoring on Static-99R and
2 they determine if there's enough evidence that the
3 person could possibly meet the criteria to be certified.

4 If then that's the case, they send the
5 individual to Butner for more intensive evaluation, and
6 that's called precertification evaluation, and they use
7 that evaluation to -- as part of their decision making
8 as a panel as to whether or not they are going to opt to
9 certify the individual as a sexually dangerous person.

10 The most recent evaluation I conducted on Mr.
11 King, forensic evaluation of 2011, of course, it was
12 conducted after he was already certified, and it's
13 really almost identical to the precertification
14 evaluation report based on the same facts, same
15 information. The only difference is basically who was
16 requesting the evaluation.

17 Q And who requested the 20011 evaluation?

18 A The Government, to my knowledge.

19 Q -- render any -- diagnosis in those reports?

20 A I did.

21 Q What diagnoses were those?

22 A I diagnosed Mr. King with paraphilia not
23 otherwise specified, nonconsent, with exhibitionism,
24 with opiate and alcohol abuse and antisocial personality
25 disorder.

1 Q Do those diagnoses remain your diagnoses today?

2 A Yes.

3 Q And just very briefly, what type of information
4 did you review in preparing your report?

5 A I had some police and psychiatric records
6 dating back from the -- around the mid 1970s -- from the
7 time that Mr. King has been in custody of the Bureau of
8 Prisons. I had presentence investigation report, and
9 then Mr. King also agreed to be interviewed by me in
10 2009.

11 Q And did you render an opinion as to whether Mr.
12 King met the criteria for civil commitment under Section
13 4248 in those reports?

14 A I did.

15 Q What was that opinion?

16 A My opinion, to a reasonable degree of
17 professional certainty, was that he did meet the
18 criteria as a sexually dangerous person based on his
19 history of either sexually violent conduct or attempted
20 sexually violent conduct or child molestation, his
21 having been diagnosed with a serious mental illness or
22 disorder and -- would have difficulty from refraining
23 from sexually violent conduct or child molestation.

24 Q Do those opinions remain your opinions today?

25 A Yes.

1 Q -- did you interview Mr. King --

2 A In 2009, I think we had about three interviews
3 that total about two and a half hours.

4 Q And during those interviews, did you talk
5 generally -- at least generally about his sex offenses
6 or his offense behavior?

7 A Yes. During his evaluation with Doctor Bazerman,
8 he had said to her that all of his previous crimes were
9 sexually motivated and repeated that still during our
10 interviews, so we didn't go into great detail about each
11 offense. I did talk to him in detail about at least one
12 offense, I know, but he said in general that all of his
13 prior offenses were sexually motivated.

14 Q Were you present in court today for his
15 testimony?

16 A Yes.

17 Q And did you hear it?

18 A Yes.

19 Q During the 2009 interview with Mr. King, what,
20 if anything, did he tell you about the victims of his
21 criminal offenses?

22 A They were all females.

23 Q And is what he told you during these interviews
24 consistent with the evidence you reviewed?

25 A Yes.

1 Q What, if anything, did he tell you about whether
2 he used a weapon during his offense conduct?

3 A He said that he used a knife, that he thought
4 women feared knives more than firearms and that he used
5 the knife as a form of intimidation and control. In at
6 least two of his documented offenses, he was found to
7 have had a knife.

8 Q Now, in your interviews, was the discussion
9 about the knife brought up in reference to his -- sexual
10 offenses, or it was just offenses in general?

11 A No. He was specifically talking about using the
12 knife in the context of committing these sexual
13 offenses.

14 Q Did he tell you -- upon meeting these victims if
15 at all that he would take or attempt to take them?

16 A He didn't talk necessarily about a specific
17 location, but that he would try to get them into his
18 vehicle and then move them to another location.

19 Q And are those statements consistent with the
20 evidence and information you reviewed in this case?

21 A Yes. Specifically in his 1974 or 5 offense, I
22 believe when he was 17, he abducted a victim at
23 knifepoint, placed her in the vehicle. There was another
24 driver in the vehicle, and the vehicle either was no --
25 or went to another location during the time that he was

1 with the victim and fondled her breasts and exposed his
2 penis and placed her hands on his penis.

3 And then there's really no -- about these
4 offenses at age 19, I believe in 1978, but the other two
5 subsequent offenses in 1983 and 1988, there were
6 vehicles involved in which he attempted to get the
7 individual in the vehicle.

8 Q What, if anything, did he tell you during your
9 interviews with him about using bindings or other items
10 to control victims?

11 A He said that he would use bindings such as
12 luggage straps to gain control of his victim and he
13 stated that he would choose bindings that would not cut
14 into the skin to reduce there being blood in his car and
15 also to minimize the pain --

16 Q And how, if at all, were those statements
17 supported by any of the evidence you considered in this
18 case?

19 A I thought it was significant that during his
20 1983 arrest that rope was found in his vehicle and that
21 it was hooked through a seat belt anchor and that he was
22 also found to have a pair of handcuffs, and I did
23 specifically ask Mr. King about those items, and he had
24 said that the handcuffs and rope was going to be used to
25 obtain control of his victim.

1 Q What, if anything, during the interviews that
2 you did -- discuss with Mr. King tell you about his
3 intentions once he had victims in the vehicle or
4 location where he --

5 A Mr. King described his sexual urges, his
6 fantasies as relating to exposing himself to these
7 females, that he would want to take them to a location
8 where he could expose himself and/or have them
9 masturbate him as well. He talked about using the mask,
10 wearing a mask because he thought he had distinctive
11 features. That way a victim wouldn't be able to easily
12 identify him -- and using index cards which have been
13 mentioned because of his speech impediment, that they
14 wouldn't be able to easily identify him from his voice
15 and that he would use these notecards and show them to
16 the victim and would say something to the effect of do
17 what I tell you to do or I'll rape you, and then he
18 would use these index cards to instruct victims as to
19 what he wanted them to do.

20 Q Were his statements to you about that topic
21 supported in any way by the evidence that you reviewed?

22 A There was no evidence in the documented sexual
23 offenses that he was ever found with a mask or index
24 cards.

25 Q What about his sexual -- the sexual urges he

1 reported to you?

2 A Can you clarify that?

3 Q You testified that he talked to you about the
4 sexual -- his sexual acts he would commit during his
5 offensive behavior. What, if any, evidence had you
6 reviewed that supports, if at all, those statements?

7 A Well, certainly with his offense at age 17, you
8 know, he had talked about having a history or having
9 urges and fantasies of exposing himself to females,
10 having females masturbate him.

11 He had also at age 18 -- I believe in the Phipps
12 Clinic, he had had fantasies about tying women up and
13 raping them, and so -- offense at age 17, he took the
14 victim by knifepoint, which was consistent with his
15 report of using a knife to obtain control of the
16 victims. He fondled her breasts, exposed his penis and
17 placed his victim's hands on his penis, which would be
18 consistent with his reports his of his urges and
19 fantasies.

20 And with his statements at age 18 where he
21 talked about having fantasies about tying up his
22 victims, of course, he was found with rope in his
23 vehicle during his 1983 arrest.

24 Q Do you have an opinion as to whether Mr.
25 King has engaged or attempted to engage in sexually

1 violent conduct or child molestation?

2 A I do.

3 Q What's that opinion?

4 A That he has attempted to engage in
5 attempted child molestation with his offense at age 15
6 and that he has engaged in attempted sexually violent
7 conduct with the other four documented offenses between
8 the age of 17 --

9 Q Is there anything unusual about the evidence
10 you have reviewed and discussions with him about his
11 particular sexual urges?

12 A Mr. King is very unique in that his urges to
13 expose himself are intertwined with -- arousal to the
14 aspect of offensive behavior. Often exhibitionists will
15 expose themselves to strangers and it doesn't really
16 proceed beyond that, but he has these urges and
17 fantasies about forcefully exposing himself to someone,
18 to restrain them or essentially holding them captive
19 while he engages in this behavior and then having them
20 masturbate him. So that was unusual. That is unique.
21 It's not something I personally have seen before.

22 And I thought when Mr. King was discussing these
23 urges and fantasies with me, the manner in which he
24 would engage in his offensive behavior, that all seemed
25 very consistent with the information that I had obtained

1 from the records as to what he had previously reported
2 about his urges and fantasies of tying up women and
3 exposing himself and then with his offense conduct as
4 well.

5 Q I just want you to talk briefly about your
6 diagnosis of paraphilia not otherwise specified. First
7 of all, that -- that diagnosis in the Diagnostic and
8 Statistical manual, can you explain nonconsent act or
9 term you --

10 A Nonconsent specifically indicates that the
11 individuals are sexually aroused to the coercive nature
12 of sexual acts. I know from Doctor Zinik's testimony
13 yesterday, he talked about the ongoing debate in the
14 community about the use of paraphilia NOS, and most
15 often that diagnosis is used when you're talking about a
16 rapist typically, wherein the case of Mr. King, we're
17 not saying that he engaged in rape behavior or that he's
18 a rapist per se. He's never engaged that we know -- of
19 sexual intercourse with a victim or forced oral
20 copulation or anything of that nature, but the diagnosis
21 is typically used when you're talking about rapists.

22 Part of the concern with the diagnosis of
23 paraphilia NOS is is that it would be -- in these types
24 of procedures in part because the diagnosis talks about
25 urges, fantasies or both -- and there was concerns that

1 because somebody had had a history of rape or documented
2 rape that they could be labeled as having paraphilia
3 simply because they have engaged in that behavior.

4 Not all rapists who rape even repeatedly are
5 considered to have a paraphilia -- has to be evidence
6 that these -- had these ongoing and intense urges and
7 fantasies about the coercive nature of the act. There
8 are rapists who rape simply because they're just very
9 criminally minded. They might in the course of a robbery
10 come across a female victim and just opt to rape her
11 just as part of his criminal thinking, but he doesn't
12 necessarily have urges or fantasies that are driving
13 that behavior.

14 So that's part of the concern about the NOS
15 diagnosis and the potential misuse, but there was an
16 article from 2008, Doctor Frances who was the
17 chairperson for the DSM-IV-T-R, was one of the
18 contributing authors and they're talking about
19 paraphilia NOS and how it can be potentially used in SVP
20 or SDP hearings, and they do go on to say -- the authors
21 say that despite these concerns --

22 MR. BELL: Your Honor, if I may object to the
23 article, we haven't established a foundation that she
24 used it in any way in rendering her diagnosis. She just
25 seems to be talking about a hearsay article, but there's

1 no foundation for its use in this proceeding.

2 MR. LOCKRIDGE: Well, Your Honor, I can ask
3 her whether she considered that as part of her
4 consideration.

5 THE COURT: That'll be fine. Why don't we lay
6 a foundation for that? Before you do that though, I
7 know, Doctor Graney, you used two acronyms. I believe
8 they were SDP and SVP. I just want to make sure that the
9 record's clear.

10 THE WITNESS: SVP, sexually violent person, or
11 SDP, sexually dangerous person.

12 THE COURT: Thank you. Mr. Lockridge?

13 BY MR. LOCKRIDGE:

14 Q Doctor Graney, in your knowledge of the
15 paraphilia NOS diagnosis, have you considered any
16 information or read any articles that informs your
17 opinion as to what that diagnosis -- the purpose of that
18 diagnosis and the history behind it?

19 A Yes.

20 Q And what information, if any, did you consider?

21 A The article I'm speaking of is a 2008 article.
22 Doctor Frances was one of the authors. It was out of the
23 Journal of the American Academy of Psychiatry and the
24 Law. Basically what the article says is that the
25 paraphilia NOS diagnosis can and should be used with

1 individuals that do have evidence of arousal to
2 coercive nature of sexual acts, but the authors say that
3 if you're going to use the diagnosis, there should be
4 clear evidence of the urges and fantasies that support
5 the arousal to the coercive nature of the acts.

6 And in the case of Mr. King, we have over 30
7 years of documentation where he has repeatedly stated I
8 have these fantasies to expose myself to women, I have
9 these uncontrollable urges to engage in this act and --
10 and, again, his criminal conduct seemed to support his
11 statements about having these urges and specifically
12 when he spoke with me, his modus operandi, if you will,
13 of how he would engage in these acts.

14 Q You also diagnosed him with three other
15 diagnoses you already mentioned. Without going through
16 all those diagnoses, which, if any, of the mental
17 illnesses you diagnosed Mr. King with would you consider
18 to be serious in nature? Let me rephrase that. Are any
19 of the diagnoses you made with respect to Mr. King
20 serious mental illnesses?

21 A Yes.

22 Q And could you just please explain?

23 A In the case of Mr. King, certainly the
24 paraphilia NOS, nonconsent and the exhibitionism I would
25 say are serious mental illnesses, disorders or

1 abnormalities. He has suffered repeated legal
2 consequences as a result of his actions. He has on more
3 than one occasion talked about the problems that these
4 sexual urges have caused in his life and has even
5 reported some distress about being unable to control
6 these urges.

7 I also believe certainly the antisocial
8 personality disorder in his case is considered a serious
9 illness or disorder. He has, you know, repeatedly
10 violated the law. He has even himself described himself
11 as very deceitful and manipulating. He uses others to
12 his advantage. He has expressed having no remorse for
13 his actions, and these behaviors have again caused him
14 repeated problems throughout his life.

15 I diagnosed him with opiate abuse and alcohol
16 abuse. I did not diagnose him with dependence just based
17 on -- really, the primary bases for those diagnoses were
18 his repeated incident reports in prison for either
19 heroin -- testing positive for heroin or possession of
20 alcohol or intoxicants, and so I don't -- he clearly has
21 a problem. He could reach the level of dependence. I
22 didn't diagnose that, but that also is a serious problem
23 for him in that he's repeatedly used, even in a prison
24 environment.

25 Q Just one other question with regard to your

1 diagnoses. What evidence did you rely on in forming your
2 opinion as to whether he currently possesses -- diagnose
3 or if these diagnoses are just prior, in the past?

4 A Well, certainly the statements that he made in
5 2009 were significant, and I know Mr. King has recanted
6 those statements, but I do find it significant that the
7 information he provided to me is very consistent with
8 statements he's made since age 15 or 17 about his sexual
9 urges and behaviors and consistent with his criminal
10 history. So I don't know if I answered your question.

11 Q Thank you. I believe you did.

12 A Okay.

13 Q And, Doctor Graney, do you have an opinion as to
14 whether as a result of his serious mental illness,
15 abnormality or disorders he would have serious
16 difficulty in retraining from sexually violent conduct
17 or child molestation?

18 A Yes.

19 Q And did you use any actuarial instruments to
20 support your opinion?

21 A Static-99R.

22 Q Did you score that Static-99R?

23 A I did.

24 Q What score did you arrive at?

25 A An eight.

1 Q What does that mean, a score of eight?

2 A A score of eight is in the high risk category,
3 and so that is additional evidence that he would likely
4 have serious difficulty refraining from sexually --
5 violent conduct. The actuarial alone does not inform my
6 opinion about that. I also looked at the fact that Mr.
7 King has had repeated documented offenses for these --
8 for what I identified as sexually motivated offense
9 behavior. He has engaged in these behaviors even when
10 he's been on supervision. He's engaged in this type of
11 sexual misconduct when he's had consenting sexual
12 partners such as his wives.

13 He has stated that -- he told me in 2009 that
14 when he was caught for an offense, it was because he
15 acted impulsively and didn't really plan or think things
16 through very well, which would say that sometimes these
17 urges were so overwhelming that he acted without maybe
18 giving it as much thought or planning as he normally
19 would like. So all of these factors to me suggests that
20 he does have serious difficulty refraining from the
21 behavior.

22 And in -- during the interviews, the level of
23 detail that he provided when talking about his offense
24 behaviors, when talking about the types of victims he
25 selected, when talking about the bindings and weapons

1 that he used, that information wasn't prompted from me.
2 I wasn't questioning him as to what type of victims do
3 you prefer, what type of weapons do you use. Mr. King
4 just provided this -- you know, this array of
5 information about his offense behaviors, and it made me
6 question it since his last offense in '88 until 2009 --
7 that he still vividly remembers this is why I chose
8 these victims, this is the weapons I used, these are the
9 bindings, this is why I chose the binding I chose. He's
10 still having these persistent fantasies and thoughts and
11 recollections of prior offenses.

12 And he told me in 2009 that he was still having
13 fantasies of exposing himself to females in the prison
14 environment, that he sometimes engaged in that behavior,
15 but he would do it in ways in which he was unlikely to
16 get caught, for example, having himself maybe exposed
17 and having it appear accidental when a female staff
18 member was doing rounds. And he talked about using
19 heroin also in prison to reduce his sexual urges or
20 impulses.

21 Q Doctor Graney, from your understanding, was he
22 able to complete the crimes for which he was convicted?

23 A Based on a review of the records, I would say
24 no.

25 Q Does your opinion on that issue in any way

1 affect your diagnoses?

2 A No. The fact -- whether or not he successfully
3 completed whatever he intended -- set out to do, the
4 fact that he even attempted to engage in a behavior
5 would suggest, of course, that the urges are still there
6 to act on these fantasies or thoughts that he's having.
7 And I did think it was significant.

8 I believe a question was asked yesterday, was it
9 unusual that someone would only have these like
10 attempted offenses. I thought it was significant that he
11 told me in 2009 that whenever I was caught, it was
12 because I acted impulsively and I didn't plan it out,
13 and from what the record shows for the -- let's see --
14 four attempted abductions, five, actually, I think,
15 attempted abductions -- at age 19 that he didn't
16 complete those, he wasn't able to follow through, that
17 the victims either managed to escape or the offense was
18 -- he was somehow interrupted.

19 Q Doctor Graney, have you read the evaluation
20 prepared by Doctor Fabian Saleh in this case?

21 A I have.

22 Q And are you aware of his overall opinion?

23 A Yes.

24 Q What was that opinion?

25 A I believe he did not believe that Mr. King

1 suffered from paraphilia. I believe he did diagnose him
2 with antisocial personality disorder, but based on his
3 review of all the information and the lack of a
4 paraphilic diagnosis, he did not believe Mr. King met
5 the criteria of a sexually dangerous person.

6 Q Are there any details that you would
7 specifically disagree with other than the actual
8 diagnosis, the overall opinion?

9 A Details of?

10 Q Of, for example, whether he's committed sexually
11 violent conduct.

12 A I'd have to look back at his report more for
13 details, but I did not agree that he had not engaged in
14 sexually violent conduct or attempted sexually violent
15 conduct, and I also did not agree with Doctor Saleh's
16 opinion that there was no evidence of a paraphilia.

17 MR. LOCKRIDGE: Your Honor, I have no further
18 questions.

19 THE COURT: We're at our -- at noon. Why don't
20 we take our lunch break and we'll reconvene at 1:00?

21 (Whereupon off the record.)

22 THE COURT: Good afternoon, folks.

23 AUDIENCE: Good afternoon, Your Honor.

24 THE COURT: Mr. Bell, I trust you have some
25 questions for the witness.

1 MR. BELL: We do, Your Honor. Thank you.

2 EXAMINATION

3 BY MR. BELL:

4 Q Doctor Graney, let's take a look at your
5 curriculum vitae. I believe that's Government's Exhibit
6 Four.

7 A Yes.

8 Q You've got that in front of you?

9 A Yes, sir.

10 Q Now, it indicates that you got your BA in
11 psychology, your master's degree in applied forensic
12 psychology or master's under an applied forensic
13 psychology program.

14 A Correct.

15 Q And then your doctorate in applied forensic
16 psychology. Post getting your Ph -- sorry, not your
17 Ph.D -- your psychology doctorate, did you do any sort
18 of fellowship training or anything like that in
19 conducting forensic evaluations or forensic psychology?

20 A I did. I completed a year long fellowship at the
21 Federal Medical Center in Rochester, Minnesota in
22 forensic psychology in 2001 to 2002.

23 Q Now, were you an employee of the Bureau of
24 Prisons at that time, or were you just working as an
25 intern or attending or something like that in the

1 program that you were discussing?

2 A I was considered an employee.

3 Q Have you been working for the Bureau of Prisons
4 since you got your degree, doctorate in psychology or
5 even before that?

6 A Well, yes. I completed my internship at the
7 Bureau of Prisons as well at the same facility that I
8 just mentioned. So I've been working with the Bureau of
9 Prisons since 2000.

10 Q Okay. Have you done any forensic evaluation work
11 for any other entities other than the Bureau of Prisons?

12 A No.

13 Q And I think in your deposition you testified
14 that you had done -- at that point, which was a month or
15 so ago, you had done 14 forensic evaluations. Have you
16 done any more since then?

17 A Well, I've done 14 of these evaluations under
18 the Adam Walsh Act, and since our deposition, I think
19 I've done two more.

20 Q Were they precerts or were they actual forensic
21 evaluations?

22 A Precerts.

23 Q Okay. So how many precertification evaluations
24 have you done and how many actual full-blown forensic
25 evaluations have you done?

1 A Well, I do want to say that with the
2 precertification evaluations, they are full evaluations.
3 They're just requested by the Bureau of Prisons. I'm
4 trying to think number wise. I think there may be
5 only -- so to date, let's say I've done 16. I think
6 there are only three or four of those that I did not
7 actually do a precertification report on before I was
8 asked to do -- 48 forensic report.

9 Q So ultimately if they get to the point of
10 needing a forensic evaluation in the ones that you've
11 done a precertification on, is it your expectation that
12 you will then do a forensic evaluation in those cases as
13 well if it's requested?

14 A Yes. The practice in the Bureau of Prisons has
15 been whoever conducts the precertification evaluation
16 then will do whatever updates are requested later on.

17 Q Okay. Now, is this the first time today -- is
18 today the first time that you've testified in one of
19 these cases in Federal court?

20 A In one of these cases, yes.

21 Q Now, of the now 16 forensic evaluations that
22 you've completed, in how many of those have you found
23 the inmate to qualify under the Adam Walsh Act as a
24 sexually dangerous person?

25 A Of those 16, 14 have been positive, so I opined

1 that they were sexually dangerous.

2 Q Now, prior to conducting -- I'm just going to
3 speak specifically of Mr. King's precertification
4 evaluation and then his forensic evaluation. Did you
5 receive any specific -- or any training specifically
6 designed to teach you or train you in doing the
7 evaluations under the Adam Walsh Act?

8 A Prior to starting the precertification
9 evaluation?

10 Q Yeah, of Mr. King.

11 A Specifically related to the Adam Walsh, I know
12 the Bureau of Prisons had done a training -- had done
13 some training with us, but I think that might have been
14 specifically for the 48. It may have been after I did
15 the precertification evaluation of Mr. King.

16 Q So between the time you did the precertification
17 and the final, which was, I think, completed in August
18 1st of this year, --

19 A Yes.

20 Q -- you did do some training on doing evaluations
21 specifically for the Adam Walsh Act cases?

22 A Yes, specifically for --

23 Q Where did that training take place?

24 A There was actually a training here.

25 Q Here being this building?

1 A Yes, by Doctor Amy Phenix. And then I believe
2 it's Doctor Trent Evans, who's a member of the Sex
3 Offender Certification Review Branch, did a training
4 with the BOP evaluator I want to say around February of
5 this year.

6 Q And in the evaluations that you've done, how
7 many of those cases did you render an opinion that the
8 offender suffered from paraphilia not otherwise
9 specified, nonconsent?

10 A I want to say only two. To my recollection, I'd
11 say two, maybe three. Most of the individuals I've
12 evaluated to date have been -- have primarily committed
13 offenses against children.

14 Q Pedophilia?

15 A More often had a diagnosis of pedophilia,
16 correct.

17 Q And that's a diagnosis that's recognized and is
18 found in the DSM-IV-T-R, correct?

19 A It is.

20 Q Now, you've testified in reference to your
21 understanding of the act and how -- what's required to
22 find someone certifiable or to civilly commit someone
23 under the act. Would you agree that if Mr. King does not
24 suffer from a serious mental illness, abnormality or
25 disorder that he cannot be civilly committed under the

1 act? Would you agree with that statement?

2 A Yes.

3 Q Now, I'm going to talk -- and I'll try to be
4 brief about some of the timeline events that have
5 occurred or that show up on this Exhibit 56, Government
6 Exhibit 56. I don't know if you want to turn to it. It
7 might be helpful.

8 A So it's tab 56?

9 Q It should be tab 56 in the Government book. I
10 would put it on the screen, but I'm not comfortable with
11 the technology at this point.

12 A Okay.

13 Q I just want to specifically just touch on some
14 of the offenses. If you will look at the second red
15 block, October, 1975 abduction case when Mr. King was
16 age 17, that is the last case where there's any
17 evidence -- other than Mr. King self-reporting, there's
18 any evidence of actual physical touching of a victim in
19 a sexual manner, isn't that correct?

20 A Yes.

21 Q Okay. And if you'll go down just to the next
22 block, it says 1975. The report of the assault by the
23 teenage boys I believe is referenced. That information
24 was given to you in the 2009 -- can you find it? Do you
25 see it?

1 A Yes. The green block?

2 Q Yes, ma'am.

3 A Uh-huh.

4 Q That was reported to you in the 2009 interview,
5 one of the interviews that you had with Mr. King,
6 correct?

7 A Yes, I believe so.

8 Q There was no record or police report or anything
9 of that nature related to that incident, was there?

10 A No.

11 Q And if you look a little further down, the April
12 7 -- I think is the first entry on the next page. Red
13 block, April 7, 1978 involved an arrest and conviction
14 for attempted abduction. In that particular case, you
15 determined that that was a sexually violent or sexual
16 offense, correct?

17 A Correct.

18 Q And that determination was based solely on Mr.
19 King's self-reporting of it as being a sexually
20 motivated crime, isn't that correct?

21 A Yes, on his report that it was sexually
22 motivated and that it also fits the pattern of the other
23 offenses that I felt were sexually motivated.

24 Q Well, but in that particular case, there's no
25 police record or anything that was done currently with

1 that offense indicating that it was a sexual offense of
2 any kind, correct?

3 A Correct.

4 Q And the 19 -- go down two blocks lower. The 1983
5 offense where he was convicted of simple assault and
6 carrying a dangerous weapon, that offense was
7 self-reported by Mr. King as being a sexually motivated
8 offense, correct? In your interview with him, did he
9 report that as being a sexually motivated offense, the
10 1983 offense?

11 A Yes. He said that all of his prior offenses had
12 been sexually motivated, and then specifically in
13 relation to this offense, he said that the handcuffs and
14 ropes were to be used to gain control of his victim.

15 Q And you used the term in your report -- it's
16 Exhibit One, Bates stamp 1923, page 1923. You use the
17 term rape kit when you describe what Mr. King -- how he
18 described these -- these were implements of a rape kit.
19 Do you recall that from your report, or can you find it
20 in your report?

21 A I'm sorry. What was the page again?

22 Q It's 1929, I believe, if I've got it correct on
23 my notes. It's page seven of the report, top paragraph,
24 first paragraph. It's your first report, not the second
25 one.

1 A Oh, the precert report?

2 Q Yes.

3 A I'm sorry. Actually, rape kit was the term that
4 Mr. King himself had used.

5 Q So he used the word rape kit? That was not a
6 term that you sort of cloned on to what -- how he
7 described it? You say he used the word rape kit?

8 A Yes. He said he didn't leave the bindings and
9 things in his car because it could be considered a rape
10 kit.

11 THE COURT: Mr. Bell, I want to make sure our
12 page numbers are sequenced here. The page I believe
13 you're referring to, it's not Bates numbered, but the
14 original page number, page seven in Government's Exhibit
15 One, the Bates number that I have is 002396.

16 MR. BELL: It may be one of those documents
17 that's in there twice, Your Honor. I'll take your word
18 for it. I have it on here on my screen as 1929, so it
19 may be in there twice. I'm sure it's -- what was the
20 page number, Your Honor? I'll look and see --

21 THE COURT: I just want to make sure for
22 purposes of the record --

23 MR. BELL: It is page seven of her
24 precertification report.

25 THE COURT: There is a reference to -- the

1 term rape kit does appear on this page six lines down.

2 MR. BELL: That's correct, and that is the
3 term that I'm speaking of.

4 THE COURT: Okay. Thank you.

5 BY MR. BELL:

6 Q Now, the 1988 case, the one that he's currently
7 incarcerated -- was currently incarcerated up until
8 January of 2010, he pled guilty to armed kidnapping. In
9 that case, you determined that that was a sexually
10 violent offense, correct?

11 A Yes.

12 Q Now, that was based primarily on Mr. King's
13 self-reporting either through his statements to the
14 probation officer in his presentence report from that
15 time or from statements that he made to you in your 2009
16 interview, is that correct?

17 A Yes.

18 Q Okay. And, in fact, in that police report
19 related to that incident, there's actually a couple of
20 mentions of do you have money, do you have a lot of
21 money that the victim says that Mr. King mentioned, is
22 that correct?

23 A Correct.

24 Q Now, have you reviewed Doctor Zinik's report?

25 A Yes.

1 Q Okay. In his report, he describes Mr. King as a
2 pathological liar. Would you agree with that? Really,
3 it's a diagnosis. Would you agree with that diagnosis of
4 Mr. King?

5 A Well, I mean, according to the DSM-IV-T-R, it's
6 not a diagnosis. It is a term used in the psychology
7 community. I would say that based on records and his
8 only admissions that he has repeatedly lied or
9 misrepresented information --

10 Q Throughout his life, from the time he was 15
11 until the present time, is that correct?

12 A That's what the documents have suggested, and,
13 yes, he's also said that same -- provided that same
14 account.

15 Q Now, you've obviously -- in preparing your
16 report and your evaluation, you reviewed all of Mr.
17 King's records. Will you agree with me that they are
18 replete with many, many diagnoses of mental illness from
19 the time he was 14 or 15 years until the present time?
20 Would you agree with that statement?

21 A Correct, and I would say many of the different
22 diagnoses he received was while he was in BOP custody.

23 Q And would you also agree that of all the
24 diagnoses that he's received over the years that you,
25 yourself, Doctor Zinik and Doctor Bazerman were the

1 three that diagnosed him with paraphilia NOS,
2 nonconsent?

3 A Yes.

4 Q And you -- I believe you testified on direct
5 that you understand that you -- your diagnosis under the
6 act in making a determination regarding his
7 applicability of the act to Mr. King, you have to make a
8 current diagnosis, not a diagnosis of something that
9 happened in 1988 or what he suffered from in 1988 or '83
10 or '78, whatever the time frame is, it's got to be that
11 he suffers from it currently, is that correct?

12 A Correct.

13 Q You diagnosed Mr. King with the mental illness
14 of exhibitionism. The only two documented incidents
15 where Mr. King exposed himself was in the 1974 case
16 where he pled guilty to indecent exposure, correct?
17 That's one.

18 A Correct. There was some indication that there
19 were two arrests in '74 for indecent exposure, but yes.

20 Q And then there was a second arrest. I believe it
21 was the '83 case or the '78 case where the victim said
22 that he exposed himself. Would you agree that those are
23 the only two, perhaps three, if there was another
24 incident in 1974 -- the only three or two incidents
25 where there was actual evidence of Mr. King exposing

1 himself other than his self-reports of doing it at other
2 times?

3 A Yes.

4 Q And you would also agree that since he's been in
5 Bureau of Prisons' custody since 1988, he has not been
6 written up or charged or sent to the SHU or anything
7 like that for indecent exposure or exposing himself to
8 male or female staff members, correct?

9 A Correct.

10 Q Now, you work at Butner, correct?

11 A Yes.

12 Q That's where your office is, and you deal with
13 that inmate population, right?

14 A Yes.

15 Q How much contact do you have with the inmates --
16 well, the 4248 inmates that are in the Maryland unit,
17 how much time do you spend dealing with those inmates?

18 A Really, unless they agree to interview, I really
19 wouldn't spend any time with them. I may see them in
20 passing. My office is in a housing unit right next to
21 Maryland Unit, so I might see them in passing. I've seen
22 Mr. King in passing many times, but I don't really have
23 any other direct interaction with them.

24 Q How difficult has it been for you -- you say
25 you've done 16 evaluations or been asked to do 16

1 evaluations. How difficult has it been for you to get
2 the detainees to be interviewed? Are they more -- are
3 most of 'em willing to do it, or do most of 'em not want
4 to do it?

5 A Most do not agree to be interviewed. In fact, of
6 the 16, Mr. King is one of only three who have agreed to
7 be interviewed.

8 Q Okay. And as far as you know -- and I understand
9 your knowledge may be limited, but as far as you know,
10 has Mr. King had any problems while he's been on the
11 Maryland unit -- you know, sexual issues, exposing
12 himself or anything like that that he hasn't been
13 written up for or charged with?

14 A To my knowledge, I have not heard anything about
15 any behavior he's engaged in that he's not received an
16 incident report for.

17 Q Just so the record's clear, the statements that
18 Mr. King made to you and the series of interviews that
19 he did with you in 2009, at this point in time, he has
20 retracted everything that he said and has indicated it
21 was untrue, correct?

22 A Correct.

23 Q You heard Doctor Zinik testify yesterday that
24 absent a diagnosis of paraphilia NOS, nonconsent, it was
25 his opinion that Mr. King could not be certified or

1 civilly committed under the Adam Walsh Act. Would you
2 agree with that statement or opinion by Doctor Zinik?

3 A I would agree, because then the only other
4 diagnosis besides antisocial would be exhibitionism, and
5 I would not say that an individual would meet a criteria
6 with just that diagnosis.

7 Q Now, you testified earlier in reference to your
8 use of the paraphilia not otherwise specified,
9 nonconsent diagnosis and the fact that there was an
10 article that you at least in part relied upon in doing
11 that. What was the name of the doctor again who wrote
12 the article, and what was the name of the article, if
13 you don't mind?

14 A The article I believe is Diagnosing Mental
15 Disorders When It Really Counts: DSM-IV-T-R and SVP/SDP
16 Cases.

17 Q And you said the doctor who wrote this article
18 was who?

19 A Doctor Frances was one of the authors, and then
20 I'm not exactly sure if I'm pronouncing this correctly.
21 I think it's Sarah Vossen (phonetic) and Weinberger I
22 think are the other two.

23 Q So there were three different doctors?

24 A Yes.

25 Q Now, you indicated that maybe the lead author

1 was the chairman of the DSM board that determines which
2 things are included in and excluded from the DSM?

3 A Yes. Doctor Frances, who is the chairman of the
4 DSM-IV taskforce -- and he has been one of the
5 individuals who has expressed a lot of concern about the
6 misuse or potential misuse of the paraphilia NOS,
7 nonconsent diagnosis.

8 Q Okay. And is this the -- he's the chairman of
9 the taskforce for the current DSM, meaning the one
10 that -- as I understand it, they're looking to be
11 published in 2013, or is this going back to the
12 DSM-IV-T-R or even the DSM-IV? Are you talking about
13 the current board or a board that he served on --

14 A I'm referring to the DSM-IV.

15 Q Okay. And he's the chairman of this committee,
16 and that committee essentially votes and makes the
17 determination as to whether something will or will not
18 be included in the DSM-IV, DSM-IV-T-R, what have you,
19 correct?

20 A That's my understanding.

21 Q So if it's his position that this should be
22 included in the DSM-IV and it was not included in the
23 DSM-IV, then obviously he was in the minority of those
24 that voted on that issue, correct?

25 A Well, I don't know if he was in the minority. I

1 will say this. The article was written only three years
2 ago and he has expressed concern again with the way the
3 paraphilia criteria reads in the DSM-IV-T-R in that it
4 says that there could be paraphilic urges, fantasies or
5 behavior, and my understanding is that was basically a
6 typo more or less, because what they don't want to
7 happen is that clinicians rely only on the behaviors to
8 make a diagnosis of paraphilia NOS, nonconsent. And when
9 I say nonconsent, paraphilia NOS is a diagnosis in the
10 DSM.

11 Q I understand.

12 A So the nonconsent -- I mean, you know an
13 individual who is sexually aroused, making obscene phone
14 calls, he would be a paraphilia NOS, scatologia.
15 That's specifying he has this unusual sexual deviancy
16 that doesn't quite fit any disorders, so we're going to
17 put him in the NOS category and we're going to specify
18 that this is his sexual arousal. Or somebody who's
19 sexually aroused to engaging in sexual acts with animals
20 would be paraphilia NOS, zoophilia.

21 So when I say nonconsent, I'm just saying that
22 he doesn't neatly fit into any one of the existing
23 diagnoses, so he falls into paraphilia NOS category, and
24 then I'm specifying with that nonconsent that his
25 particular arousal -- to coercive acts with a

1 nonconsenting person.

2 Q But there are specific paraphilias that are
3 listed in the DSM-IV-T-R, correct?

4 A There are some, yes.

5 Q Such as exhibitionism, sexual sadism, et cetera,
6 et cetera, they are specific diagnoses in the
7 DSM-IV-T-R, correct?

8 A Yes.

9 Q And there's also this NOS category that has
10 certain what you call descriptors listed in the
11 DSM-IV-T-R that's actually listed in there, correct?
12 Scatophilia (phonetic) I guess is one of 'em, correct?

13 A Correct, scatologia.

14 Q Scatologia, I'm sorry. But this nonconsent
15 descriptor was specifically excluded from the DSM-III,
16 the DSM-IV, and the DSM-IV-T-R. In fact, it was not even
17 included in the appendix, isn't that right?

18 A That is correct, but the basis for that was,
19 again, there were a lot of individuals in the field who
20 said we don't think there's enough evidence to show --
21 that can be supported by the research to say that
22 there's a significant number of people who are sexually
23 aroused to the coercive nature of sexual acts.

24 Now, people have said though there are these
25 people that do exist. Certainly there are people who are

1 aroused to the coercive nature of these behaviors. The
2 problem is often proving that, because most, let's say,
3 rapists, because that's typically who has the diagnosis,
4 are not going to admit to having fantasies and urges to
5 engage in rape behavior, and it's difficult to prove
6 otherwise that these fantasies and urges exist, because
7 even with PPG testing, the penile plethysmograph where
8 they test sexual arousal patterns, somebody might be
9 aroused to a sexually coercive image or they might show
10 that they're aroused when that image is exposed, but you
11 can't really differentiate if it's the coercive nature
12 of the stimuli that's arousing or if it's simply not
13 inhibiting their arousal.

14 So they say that you can make this paraphilia
15 NOS diagnosis with individuals who are sexually aroused
16 by coercive acts, but there has to be some other
17 evidence that they have urges and fantasies that drive
18 that sexually deviant behavior.

19 And, again, in Mr. King's case, since 1974 or
20 earlier, he has reported I have these fantasies of
21 exposing myself, I have these urges to engage in this
22 behavior, I feel that I can't control it.

23 Q But in his case specifically, you're relying on
24 self-reports primarily where he talks about urges and so
25 on and so forth of an individual who, I think you would

1 agree, in fact, was diagnosed or described as a
2 pathological liar, correct?

3 A This is correct, but it does make me wonder --
4 he's been saying this since about age 17 that we know of
5 at least, but I think even earlier, so age 17 or 18 when
6 he was at the Phipps Clinic, and it was his statement
7 that he's used this at times to avoid consequences or
8 get lighter sentences or be put in treatment versus in
9 jail.

10 My question would be why -- once he's convicted
11 in '88 of his most recent sexual offense and he was in
12 BOP custody, what would be -- then be his motivation to
13 continue to report these same urges and fantasies even,
14 you know, preexisting the Adam Walsh Act? And so I
15 weighed that with yes, he does have a history of being
16 deceitful and manipulating, but there would be no clear
17 advantage to him continuing to make these assertions
18 while he's in custody and when there's clearly no other
19 benefit from doing that.

20 Q But isn't there something in the record -- and
21 correct me if I'm wrong, but I believe his mother
22 described him as chronically lying to the point he lied
23 about things he didn't even have to lie about early on.

24 A I think she referred to him as a chronic liar.
25 I don't know about the other half, that he lied about

1 things that he didn't have to lie about. I'm not sure
2 about that.

3 Q Let me see if I can find that in the record. But
4 you would agree that without this evidence coming from
5 Mr. King as you stated earlier, the concern with the
6 diagnosis is that it be based upon behavior?

7 A Uh-huh.

8 Q And in your opinion, it can only be diagnosed
9 when you have specific evidence that it's the nonconsent
10 aspect of the action that causes the arousal, correct?

11 A Yes. And Mr. King has stated basically in so
12 many words that the forceful act of exposing himself to
13 another person is, he said, stimulating, euphoric, it's
14 better than any drug.

15 Q And he said this in 2009 in the interview
16 I believe you had with him?

17 A Yes.

18 Q Now, when they talk about these diagnoses of
19 paraphilia NOS, nonconsent, do you agree as Doctor Zinik
20 stated yesterday that there is a different standard
21 involved when you're talking about the clinical
22 treatment of an individual and whether using a diagnosis
23 to have him civilly committed -- do you agree that
24 there's a different standard there?

25 A Yes.

1 Q And that the standard in a court of law where
2 you're trying to take someone's liberty away is higher
3 than if you designate someone with a diagnosis when
4 you're just clinically treating them and using that as a
5 method to determine the proper treatment? Do you agree
6 that that's a higher standard?

7 A Yes, certainly.

8 Q I don't want to belabor the risk assessment
9 tools, but I just want to briefly touch on it. You
10 indicated that you did a Static-99R evaluation of Mr.
11 King, correct?

12 A Correct.

13 Q And that he fell into a high risk category.
14 Would you agree with what Doctor Zinik said yesterday in
15 relation to the limited use and limited -- the limited
16 usefulness of the Static-99 and other actuarial risk
17 tools in determining whether someone will or will not
18 reoffend?

19 A Yes. It's only one tool in the risk assessment
20 as a whole.

21 Q And you can't tell -- you can't necessarily
22 take the percentages -- I think in your case you found
23 that those in the group that you placed Mr. King in had
24 a 45 percent chance of reoffending within five years and
25 a 53 percent chance of reoffending in ten years. Is it

1 fair to say or do you agree with the statement that you
2 don't know which side of the fence that Mr. King would
3 end up in, only that within that group, that's the rate
4 that they've determined over a period of time? Correct?

5 A Correct. It's not to say that Mr. King would
6 reoffend, you know, at that rate, but that other sex
7 offenders who were similar to Mr. King have been
8 rearrested or reconvicted. So it doesn't count
9 reoffenses in general, because there may be undetected
10 crimes, so they've either been rearrested or reconvicted
11 of another sexual offense.

12 Q And in his case, particularly your scoring of
13 him, as an example, related to how many prior sexual
14 offenses he had at least in large part came from the
15 self-reporting of a sexual motivation for these crimes,
16 correct?

17 A Correct.

18 MR. BELL: Your Honor, if you give me a
19 minute, I may be close.

20 THE COURT: That'll be fine.

21 BY MR. BELL:

22 Q You indicated that one of the statements that
23 Mr. King made to you in your interview was that he used
24 heroin to dampen his sexual urges while he was in
25 custody. If you know, has he had any infractions or

1 anything for testing positive for opiates or heroin
2 while he's been at Butner?

3 A Speaking since he's most recently been at
4 Butner, I don't know the date of all his incident
5 reports, so --

6 Q Well, talking about since his last --

7 A Since he's been there this last time, he has had
8 no incident reports for substance related violations.

9 Q And he's been there since, what, early 2009?

10 A September of 2009, I think.

11 Q Well, late 2009. And as far as you know, he's
12 not had any infractions or anything for any sexual
13 offenses or any inappropriate sexual conduct since that
14 time, has he?

15 A No.

16 MR. BELL: Nothing further, Your Honor.

17 THE COURT: Very good, sir. Thank you. Mr.
18 Lockridge?

19 MR. LOCKRIDGE: Just a few questions, Your
20 Honor.

21 EXAMINATION

22 BY MR. LOCKRIDGE:

23 Q Doctor Graney, you indicated that Mr. King made
24 those various admissions to you in 2009, to Doctor
25 Bazerman in 2009, correct?

1 A Correct.

2 Q Would any doctors that you're aware of that
3 might have evaluated Mr. King while he was in BOP
4 custody -- because it was before 2009, would they have
5 had access to those admissions?

6 A I'm sorry. Could you repeat that?

7 Q Admissions Mr. King made to you in 2009, were
8 those doctors that evaluated him prior to 2009 -- and
9 they obviously would not have had access to his later
10 admissions.

11 A No.

12 Q Are you aware of whether they would have had
13 access to all the documents that you reviewed for
14 purposes of this evaluation?

15 A I would say based on my experience at the
16 Bureau, it would be unlikely that they would have the
17 mental health records from his prior treatments.

18 Q All right. On cross there, you briefly -- the
19 Static-99R again, and you testified that in the
20 Static-99R, it reports or it talks about percentage of
21 risk or it predicts risk to reoffend or arrests and
22 convictions, correct?

23 A Correct.

24 Q So in your opinion, does the -- do you have an
25 opinion as to whether the Static-99R accurately reports,

1 overreports or underreports risk with regard to risk to
2 be arrested or convicted?

3 A Well, the numbers in the Static-99R are looking
4 at rearrest, reconviction rates, so, of course, there
5 are a large number of sexual offenses that go
6 undetected, so it doesn't necessarily tell you -- it
7 doesn't necessarily tell you the likelihood that someone
8 will reoffend. They might reoffend and not be detected,
9 but they would be rearrested or reconvicted of a sexual
10 offense, so in some cases it could arguably not
11 indicate the -- what's the word I'm looking for? Not
12 show the likelihood of actually reoffending. It might
13 minimize that number a little bit.

14 Q I should have made the question a little
15 clearer. I appreciate your explanation. And -- one or
16 two more questions. The diagnosis of exhibitionism, can
17 it be diagnosed based on urges or fantasies alone?

18 A Yeah. You can diagnose a paraphilia based on
19 urges and fantasies without the presence -- the
20 behaviors if the individual is telling you that those
21 urges and fantasies are causing significant distress or
22 impairment in their life.

23 Q So would those urges or fantasies typically come
24 from the person that is experiencing them? I mean,
25 would those admissions typically come from that same

1 person?

2 A Well, yes, typically.

3 MR. LOCKRIDGE: Nothing further, Your Honor.

4 THE COURT: Thank you, sir. Mr. Bell?

5 MR. BELL: Just briefly, Your Honor.

6 EXAMINATION

7 BY MR. BELL:

8 Q In the Bureau of Prisons system, for each
9 inmate, is there not a psychology data system that
10 basically has a record of every interaction that that
11 inmate has had with the mental health person within the
12 system?

13 A Correct.

14 Q And is that not accessible to any person who
15 would be treating Mr. King during his stay in the Bureau
16 of Prisons?

17 A It should be, yes. It should be accessible to
18 any psychologist.

19 Q So that would include records going all the way
20 back to the first day he came in and maybe some records
21 even prior to that based on histories, correct?

22 A If he reported history and it was documented,
23 yes, then it would be in there.

24 MR. BELL: Nothing further, Your Honor.

25 MR. LOCKRIDGE: Nothing further, Your Honor.

1 THE COURT: Doctor Graney, I have one question
2 for you. You were asked, I believe, by Mr. Bell a
3 question, and the question included a reference to the
4 recidivism rate for the high risk, high need group under
5 the Static-99R, and I just want to make sure I
6 understood. You were not -- you were in no way by your
7 answer indicating that they were adopting a different
8 recidivism rate than that that is set forth in your
9 report for that group, is that right?

10 THE WITNESS: No, sir. Without looking at the
11 report, I don't remember the specific numbers. I was
12 just saying that those numbers are based on the sample
13 group that those numbers were taken from -- were
14 rearrests or reconvictions for those individuals, and so
15 it doesn't suggest that Mr. King is -- it's not saying
16 that he's definitely going to reoffend at this rate over
17 this period of time. It's just comparing him to that
18 sample of individuals who are similar to him.

19 What I was trying to say with the -- I think
20 it might have been Mr. Lockridge's questions -- was that
21 because it looks at rearrests and reconvictions, we
22 can't know the degree to which somebody actually
23 reoffends necessarily all the time. There might be
24 undetected offenses, so it might be an underreporting of
25 actual reoffense rate when you're just looking at

1 arrests or convictions. We can't ever know how many
2 times somebody may actually reoffend if not all the sex
3 offenses are reported.

4 THE COURT: I understand and I appreciate that
5 response. My specific concern, I think inadvertently Mr.
6 Bell referred to ten year recidivism rate for this group
7 is 53 percent, and I believe the report gives it as 55.

8 MR. BELL: That was my mistake, Your Honor.
9 I misidentified it.

10 THE COURT: I assumed it was inadvertent, and
11 I just wanted the record to be clear that Doctor Graney
12 wasn't adopting 53 percent.

13 THE WITNESS: No, sir. It doesn't change my
14 numbers. Without looking at the report, I didn't
15 remember them off the top of my head.

16 THE COURT: That's fine. Very good, ma'am.
17 You're excused.

18 THE WITNESS: Thank you.

19 THE COURT: Any further evidence from the
20 Government?

21 MR. LOCKRIDGE: No, Your Honor. The Government
22 rests.

23 THE COURT: Mr. Bell, is there any evidence
24 for the Respondent for today?

25 MR. BELL: There is not today, Your Honor.

1 This is -- unfortunately, we ran into this situation
2 which I was worried about.

3 THE COURT: That's fine.

4 MR. BELL: Doctor Saleh will be here this
5 evening, and he will be prepared to go first thing in
6 the morning, but other than that, we don't have
7 anything.

8 THE COURT: That's fine. Well, let's reconvene
9 then at 9:00 tomorrow morning.

10 MR. BELL: Thank you, Your Honor.

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13 WHEREUPON, the hearing was suspended at 1:51 p.m.

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CERTIFICATE

I, Glynde M. Jones, Notary Public in and for the
State of North Carolina, do hereby certify that the
foregoing transcript of proceedings taken in the United
States District Court is a true and accurate
transcription of the shorthand notes of the proceedings
taken by me in machine shorthand and transcribed by
computer under my supervision.

Dated this 3rd day of November, 2011.

Glynde M. Jones

GLYNDE M. JONES, NOTARY PUBLIC

Notary Public Number: 20022120063